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Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

WILLIE MAI SPECK,	)	
	)	
PETITIONER,	)	
	)	
vs.	)	NO. _____
	)	
MCQUIDDY PRINTING CO., INC.,	)	
	)	
RESPONDENT	)	

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION OF WILLIE MAI SPECK
FOR A WRIT OF CERTIORARI

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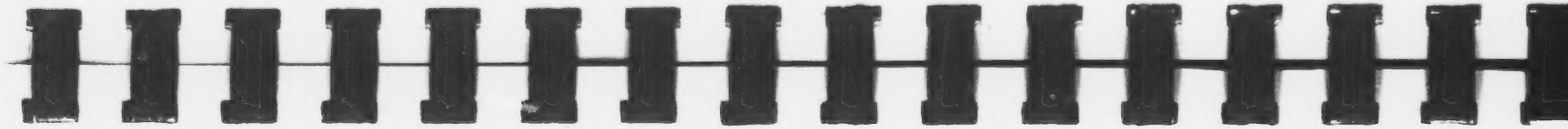
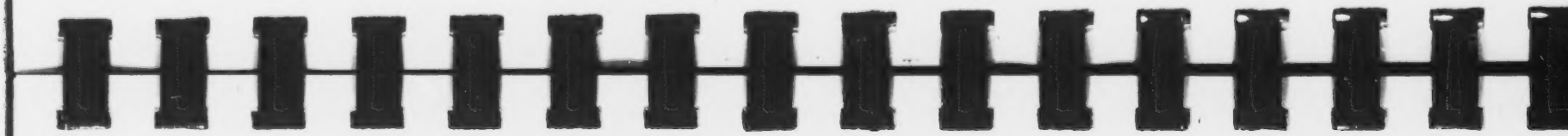


QUESTIONS PRESENTED FOR REVIEW

I. Whether the Sixth District erred in refusing to apply the least detrimental alternative means test of EEOC v. Chrysler, 733 F.2d 1183, 1186 (6th Cir. 1984) to the defense of Economic Necessity following the establishmen of a prima facie case of age discrimination by the plaintiff.

II. Whether the Sixth District decision that the plaintiff failed to carry her burden of proof in her claim of sex discrimination was clearly erroneous.

III. Whether the Sixth District determination that the plaintiff failed to carry her burden of proof on the claim of age discrimination was clearly erroneous.



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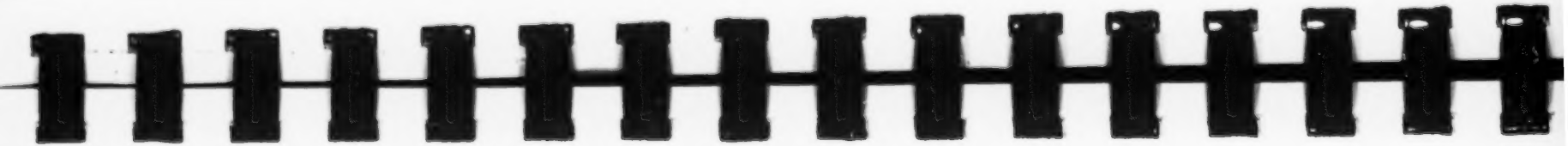
Union Leader Corporation v. Newspapers of New England, Inc., 284 F.2d 582, 587 (1st Cir. 1960) Cert. Den. 365 U.S. 833 (1961)



United States v. Maryland and Virginia Milk Producers Association, 167 F.Supp. 799, 808 (Dist of Col. 1958) Affirmed 362 U 458 (1960)

United States Postal Service Board of Governors v. Aikens, 460 U.S. at 714, Note 3, 103 S.Ct. at 1481, 75 L.Ed.2d at 409

West v. Fred Wright Construction Co., 756 F.2d 31, 33 (6th Cir. 1985)

Williams v. Caterpillar Tractor Co., No. 84-5491, Slip Opinion 4 (6th Cir. August 9, 1985)

OFFICIAL REPORTS OF COURTS BELOW

The opinion of the United States District Court for the Middle District of Tennessee as not yet been reported in the Federal Supplement. The opinion of the United States Court of Appeals for the Sixth Circuit is not recommended for full text publication. Copies of the above referred to decisions are appended hereto.

STATEMENT OF THE GROUNDS UPON WHICH JURISDICTION IS INVOKED

This Petition for Writ of Certiorari is brought before the Court upon jurisdiction conferred by 28 U.S.C. Section 1254(1). This Petition is timely filed pursuant to 28 U.S.C. Section 2101(c). The opinion of the United States Court of Appeals for the Sixth Circuit was filed by the clerk on February 16, 1987. No Petition for rehearing was sought.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The age discrimination and employment act of 1967,

as ammended, 29 U.S.C. Section 621 through 634 and Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000(e) through 2000(e-17) are set forth verbatim in the Appendix.

STATEMENT OF THE CASE

This is an action brought by the Plaintiff alleging of sex and age discrimination in her termination from work as a machine operator at Defendant's bindery plant. Following the issuance of a right to sue letter by the Equal Employment Opportunity Commission, this case came on to be heard at a bench trial before the Honorable Thomas A. Higgins, United States District Judge for the Middle District of Tennessee. Following a decision in favor of the Defendant on both counts, Plaintiff appeal to the United States Court of Appeals for the Sixth Circuit which affirms the District Court's decision by a two-to-one vote in an opinion filed on February 16, 1987. The Petition for Writ of Certiorari is timely filed.

Plaintiff, WILLIE MAI SPECK, was as of the date of trial, a sixty-two (62) year old female. (Willie Mai Speck TR at 3). The Plaintiff had been employed by the Defendant, McQUIDDY PRINTING COMPANY, INC., since 1950 until March 19, 1982 when, three weeks shy of her sixtieth (60th) birthday, she was discharged without notice. (Willie Mai Speck TR at 3,4).

During this thirty-two (32) year period, (Willie Mai Speck TR at 36,37); plaintiff had been an exemplary employee and had never been layed-off or disciplined. (Willie Mai Speck TR at 5; Paul Durham TR at 131). During this period of time she had received regular salary increases and had become the only woman machine operator in the bindery section of Defendan's plant. (Willie Mai Speck TR at 9,19,24,29; James Atwood TR at 58,59). At the time of her discharge, the Plaintiff was the only woman machine operator and was the highest paid woman in the bindery department. (Willie Mai Speck TR at 9,19; James Atwood TR at 58,59).

The Plaintiff had worked on all of the machines which existed in the bindery department of Defendant's plant. (Willie Mai Speck TR at 7). Her last assignment was that of "rover" which was an employee assigned to provide relief, backup and assistance to the regular machine operators. (Willie Mai Speck TR at 7,9,10,37 38,44). This job played an imprtant role in the operation of the bindery department since the rover was

available to speed production. Plaintiff could operate every machine in the bindery department and provide maintenance upon all of the machines in the department. (Willie Mai Speck TR at 7,9,10,37,38,44).

In addition to her position as rover, Plaintiff also helped train junior employees to be machine operators and to fine tune their skills on each machine. (Willie Mai Speck TR at 20,27,36; James Atwood at 58: George Cotton TR at 125). Plaintiff was also called on numerous occasions to handle "rush orders" which required special handling and fast production, and was called to work on machines on both her regulary scheduled shift (the day shift) and on the night shift. (Willie Mai Speck TR at 10,16,184,187; David McQuiddy TR at 161; Paul Durham TR at 182-83). Additionally, the Plaintiff was frequently called by other printing companies in the Nashville area (with Defendant's permission) to troubleshoot on machines in their printing operations. (Willie Mai Speck Tr at 11,12,13,14; Ray Hyde TR at 62). Plaintiff had an excellent reputation in the printing industry as being a knowledgeable machine operator.

(Willie Mai Speck TR at 10,38,187).

Plaintiff was the only female machine operator at Defendant's plant. (Willie Mai Speck TR at 9,19; James Atwood TR at 58,59; Wallace Clark TR at 101-02). In fact, the Plantiff was the only female machine operator ever employed by the Defendant. (Willie Mai Speck TR at 9,19; James Atwood TR at 58,59; Wallace Clark TR at 101-02). Historically, there exists within the bindery department of all major printing companies within the Nashville area two levels of employment; a man's division and a woman's division. (Willie Mai Speck TR at 8,19,27; Ray Hyde TR at 66; Wallace Clark TR at 101-02; David McQuiddy TR at 166-67). Men operate the machinery and are paid more than women who do primarily hand or table work. (Willie Mai Speck TR at 8; James Atwood TR at 58,59; Ray Hyde at 66; Wallace Clark TR at 101-02; David McQuiddy TR at 166-67). Men with less seniority and experience are brought in and trained on the machines as job openings are not posted within the plant. (Willie Mai Speck TR at 18,19; Wallace Clark TR at 102; David McQuiddy TR at 164). Other than the Plaintiff, there

has never been another female machine operator. (Willie Mai Speck TR at 9,19; James Atwood TR at 58,59).

After many years of service as a machine operator, and because of her extensive knowledge of all of the machines in the bindery department, Plaintiff was promoted to the position of rover. (Willie Mai Speck TR at 9,10,37,38). In this position, she would be more valuable to the department than as a regular machine operator because, in the words of her foreman, Paul Durham, she was needed in too many places to be confined to one machine. (Willie Mae Speck TR at 10, 38,187).

Until approximately six (6) months prior to her discharge, the Defendant had no regular or objective criteria for the evaluation of employees or the employee's productivity. (Willie Mai Speck TR at 15,51). The only production evaluation systems in place was a rather cumbersome time punch card system which measured the amount of time an employee required in order to set up for a particular job. (Willie Mai Speck

TR at 15,16). As all jobs require different types of set up and regular machine maintenance was included in the set up time, evaluation by a supervisor of an employee's productivity was necessarily very subjective. (Wallace Clark TR at 88; George Cotton TR at 130). There was no objective measurement to document the Plaintiff's productivity, but the Plantiff was never consulted about her productivity. (George Cotton TR at 130,132,137-138,143).

Additionally, the introduction of rush orders into the system necessarily resulted in a decrease in productivity as it relates to regularly scheduled assignments. (Willie Mai Speck TR at 16,182-183,184, 187; Wallace Clark TR at 98; David McQuiddy TR at 161). An employee given a rush order was required to strike the machine of the job on which she was working and reset the machine for the rush production. Once the rush production was completed, the machine had to again be struck and reset for the regularly scheduled assignment. (Willie Mai Speck TR at 16,182-183,184, 187). Because of the Plaintiff's speed and knowledge of all of the machines in the bindery department, rush

orders were primarily channelled to the Plaintiff. (Willie Mai Speck TR at 17,18).

Approximately one week prior to her discharge, Plaintiff was assigned to train employee Jeff Young, a 25 year old male, who had been recently transferred from the night shift. (Willie Mai Speck TR at 20,28, 36; James Atwood TR at 58; George Cotton TR at 125,126). Previously, Mr. Young had been trained by George Cotton, when Mr. Cotton worked on the night shift (he later was transferred to be Ms. Speck's supervisor on the day shift). (George Cotton TR at 125-126). Ms. Speck had also trained Mr. Cotton. (George Cotton TR at 118). After approximately one week of training of Mr. Young and the use of the stitcher-trimmer machine, Ms. Speck was notified of her discharge. (Willie Mai Speck TR at 21; George Cotton TR at 125).

Plaintiff was told she was discharged due to lack of work, although at all times prior to her discharge the Plaintiff was busy with work in the bindery department. (Willie Mai Speck TR at 21,42,60; Wallace Clark

TR at 110). This work occurred even though other employees may have been idle due to the fact that the Plaintiff could work on any machine in the department and was not confined to a particular machine. (George Cotton TR at 121-122). The discharge of the Plaintiff occurred without notice and the Plaintiff received no severance pay nor vacation pay which had accumulated. (Willie Mai Speck TR at 3,4,21,32). The only benefit received by the Plaintiff upon her discharge was a lump sum payment of her pension in the amount of Eight Thousand Three Hundred Sixty-Four and 67/100 ($8,364.67) Dollars. (Willie Mai Speck TR at 21,27,35; Wallace Clark TR at 108). Because the Plaintiff had no notice of her termination, the pension money was necessarily expended for the payment of bills of the Plaintiff. (Willie Mai Speck TR at 22,23,24).

Although there had never been a lay off in the history of the Defendant (Willie Mai Speck TR at 40,41, 47; George Cotton TR at 112; David McQuiddy TR at 112) and Defendant's Employee Manual requires that lay-offs be made in the reverse order of seniority, (Wallace

Clark TR at 96,97) the Defendant established no criteria for lay-offs in March of 1982. (Wallace Clark TR at 93; George Cotton TR at 112,121; David McQuiddy TR at 149-150,163; Paul Durham TR at 163,171). Instead, the decision was made by company management that lay-offs were required and shift foremen were instructed to make a list of employees who chould be layed off. (George Cotton TR at 112, 121-122). In March of 1982, twelve (12) employees were layed off, nine (9) of whom were women, and all of whom were over the age of forty (40). (Willie Mai Speck TR at 42,51; James Atwood TR at 59; Wallace Clark TR at 84; David McQuiddy TR at 150-151). In the bindery department, the Plaintiff and Mr. Bob Bardill, both over the age of forty (40), were targeted for lay off. (Willie Mai Speck TR at 42,47; Wallace Clark TR at 109-110).

The Defendant's management, in a meeting to finalize lay-offs, discussed the Plaintiff's length of service with the company and recognized that the company was opening itself up to litigation by laying off the

Plaintiff. (Wallace Clark TR at 83-84,88,89; David McQuiddy TR at 169). Despite these concerns and despite the fact that no criteria for determining which employees should be lay off existed, the Plaintiff was discharged.

After the discharge of the Plaintiff, the function of the rover was assimilated into the regular machine operator job. (Wallace Clark TR at 100; George Cotton TR at 123; Paul Durham TR at 182). All of the machine operators of Defendant's plant were now under the age of forty (40) and were male. (Willie Mai Speck TR at 9,19; James Atwood TR at 58,59). Most of the employees in the department at this time were trained by the Plaintiff or by individuals trained by the Plaintiff. Specifically, Jeff Young, a twenty-five (25) year old male, operated the stitcher-trimmer machine after having been trained on that machine approximately one week prior to her discharge by the Plaintiff and George Cotton, the foreman, a thirty-five (35) year old male, filled in on other machines in the bindery department. (Willie Mai Speck TR at 20,27,36; James Atwood TR at

58; George Cotton TR at 118). Other machine operators in the bindery department were cross-trained to work on other machines. (Wallace Clark TR at 100; Paul Durham TR at 182). No employee other than the Plaintiff could work on every machine in the bindery department. (George Cotton TR at 121-122). Plaintiff's function as rover was, in effect, filled by the other employees in the bindery department, all male, and all under the age of forty (40). (Wallace Clark TR at 100; George Cotton TR at 123; Paul Durham TR at 182).

Following her termination, the Plaintiff had no employment prospects and was unemployed for a period of approximately two (2) months prior to finding subsequent employment with another printing company in the Nashville area. (Willie Mai Speck TR at 24,25, 44-45). Her reputation in the industry, as well as her experience, allowed her to obtain employment although said employment was at a slightly lower hourly rate than with Defendant. Laid-off due to no senority. (Willie Mai Speck TR at 25,49; Ray Hyde TR at 63).

Following her discharge from Defendant, the Plaintiff timely filed a complaint with the Equal Employment Opportunity Commission and, following the issuance of a Right to Sue Letter, filed this action in the United States District Court for the Middle District of Tennessee. The case came to trial before the District Court, the Honorable Thomas A. Higgins, United States District Judge, sitting without a jury on January 30, 1985. In a memorandum and order issued on September 20, 1985, and entered on the docket by the Clerk on September 24, 1985, the court found in favor of the Defendant on both the Plaintiff's Title VII and Age Discrimination Employment Act claims. Following the entry of this order, a timely notice of appeal to the United States Court of Appeals for the Sixth Circuit was filed and present counsel substituted for the Plaintiff. In an opinion filed on February 16, 1987, United States Court of Appeals for the Sixth Circuit firm the decision of the Trial Court in a two-to-one decision. This application for Writ of Certiorari is timely filed.

REASONS FOR GRANTING THE WRIT

I. A. The Sixth Circuit erred in affirming the District Court's refusal to require the defendant to show. The District Court correctly held that the Plaintiff had established a prima facie case of age discrimination. (Memorandum p.7). The Plaintiff, Ms. Speck, was within the protected class since at the time of discharge she was age 59. (Willie Mai Speck TR at 109). She was qualified for her job and she was discharged. (Willie Mai Speck TR at 3,4,21, 32; James Atwood TR at 57,58; Ray Hyde TR at 64; George Cotton TR at 131; Paul Durham TR at 181). Defendant McQUIDDY PRINTING eliminated the Plaintiff's job and, although she was not replaced, her duties were assumed as needed by George Cotton, a male in his thirties (30's), and retained Jeff Young, a male in his twenties (20's), in a job for which Ms. Speck had trained him. (Willie Mai Speck TR at 20,27,36; James Atwood TR at 58; George Cotton TR at 123). The District Court specifically held that although the Plaintiff was not replaced, her duties were assumed by a person (or

persons) outside the protective class and those discharged at the same time as the Plaintiff were within the protected class. (Memorandum p.9).

The Defendant, McQUIDDY PRINTING, asserted a business necessity defense and alleged that business necessity and not age was the reason for the Plaintiff's discharge. Althought the Plaintiff testified that she was always busy and that she was busy at the time of her discharge, she did not dispute the claim of poor financial contition of the Defendant.

B. EEOC v. Chrysler Corporation is applicable in the present case because age was a factor in Plaintiff's discharge.

Citing Union Leader Corporation v. Newspapers of New England, Inc., 284 F.2d 582, 587 (1st Cir. 1960), cert den. 365 U.S. 833 (1961); and United States v. Maryland and Virginia Milk Producers Association, 167 F.Supp. 799,808 (D.D.C. 1958), affd., 362 U.S. 458 (1960) this Sixth Circuit required a showing in anti-trust cases involving the "failing company" defense of

a least detrimental alternative means test. This test was adopted in EEOC v. Chrysler Corporation, supra. to cases where the forced early retirement of a large number of its employees during a period of severe financial difficulties was challenged.

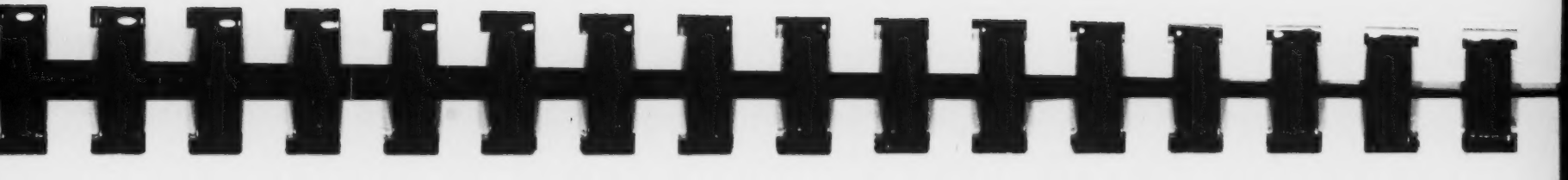
The "failing company" on business necessity defenses in an affirmative defense set forth within the statute pursuant to 20 U.S.C. §623(f)(3) and must be alleged and proved by the Defendant. In order to sustain this burden, this Sixth Circuit has required defendants to meet two tests. The first,is that "the necessity for drastic cost reduction obviously must be real. Second, the forced early retirements must be the least-detrimental alternative means available to reduce cost."

The trial court concluded that his test was not applicable due to a claim that the age of employees to be discharged was not considered by the Defendant. (Memorandum p.14). In reaching this conclusion, the Court relies upon the direct statement of the Defendants. However, the Court ignored the fact that "a finding that age was one of the determining factors...

does not depend on direct evidence...but may be inferred from the totality of the circumstance." Carpenter v. Continental Trailways, 446 F.Supp.70(E.D. Tenn. 1978) Citing Laugensen v. Anekonda Company, 510 F.2d 307 (6th Cir. 1975) and King v. International Union, 443 F.2d 273 (6th Cir. 1971).

This Court has required more from a defendant than just a simple statement that the discharge of the plaintiff was brought about by economic necessity. For example, the U.S. Supreme Court in Furnco Construction Corporation v. Waters, 438 U.S. 567,577; 57L.Ed.2d 597; 98 S.Ct. 2943 (1978), in discussing a prima facie case, stated that the establishment of a prima facie case, in effect, creates a presumption that the employer unlawfully discriminated against the amployee. If the trier of fact believes the plaintiff's evidence, and if the employer is silent in the fact of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case.

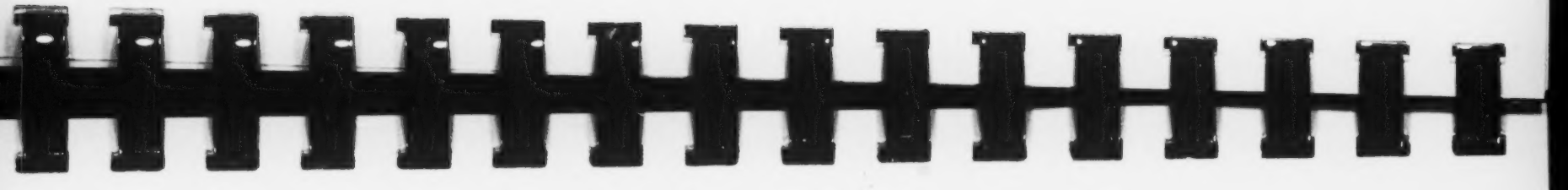
Therefore, this court must require more from a defendant than the simple self-service statement that



was accepted by the trial court that the decisions involving the plaintiff were made for reasons other than age. Accordingly, the requirements of Chrysler are applicable to this case since a prima facie case was established and the trial court committed reversible error by failing to consider same.

C. The actions of the defendant fail the least detrimental alternative means test in that the defendant failed to establish a careful system to prevent against age discrimination.

The establishment of a prima facie case, in effect, creates a presumption that an employer unlawfully, discriminated against the employee. If the trier of fact believes the Plaintiff's evidence, and if the employer is silent in the face of presumption, the court must enter judgment for the Plaintiff because no issue of fact remains. Furnco Construction Corporation v. Waters, supra. Because of the effect of a prima facie case, this court must require more from a defendant than just a simple statement that the discharge of the plaintiff was brought about by economic necessity. As has been



stated, Chrysler, supra, requires that the defendant show that the actions taken are the least detrimental alternative means available to reduce costs required by unfavorable economic conditions of a defendant company.

In order to pass the test of Chrysler, a defendant must show consideration of numerous factors in making a decision as to which employees must go and which employees will be allowed to stay. Illusterative of this process are Carpenter v. Continental Trailways, 446 F.Supp. (E.D.Tenn. 1978) and Gill v. Union Carbide Corporation, 368 F.Supp. 364(E.D. Tenn 1973). In each of these cases, the court noted that the defendants "in a careful and intelligent manner, undertook to establish a system to evaluate the qualifications of each employee in the various divisions, including the plaintiff. Pursuant to conferences held by the management, guidelines were established and forwarded to all divisional directors by the then deputy director...". The court went on to find: "The evidence clearly indicates that the company officials conscientiously, and without any intention to do anyone any injustice, used these factors

in evaluating the services of its employees in order to determine who must be terminated. Review boards of various levels were established to scrutinize those who had been selected for possible termination by individual directors."

The evidence presented to the trial court was abundant and uncontradicted that the defendant established no criteria to govern lay-offs of its employees which were to occur in March of 1982. (Wallace Clark TR at 93; George Cotton TR at 112,121; David McQuiddy TR at 149-150,163,171). President McQuiddy made a determination that the production department was overstaffed. (Wallace Clark TR at 83,90). He called Foreman George Cotton into his office and expressed to him to prepare a list of people in his department that he could do without. (George Cotton TR at 112-120,121). Terminations were then made in March of 1982 based upon the recommendations of the foremens. (George Cotton TR at 112,120-121).

There existed within the defendant no objective system for determining the productivity of a worker.

(Wallace clark TR at 93; George cotton TR at 112,121; David McQuiddy TR at 149-150,163,171). The recently employed labor analysis was disregarded by Foreman Cotton as being "too new" and unreliable. (George Cotton TR at 136,143). Production was dependent upon what jobs a particular employee was assigned (and whether the employee was assigned rush orders) and criteria for evaluating production was subjective. (Wallace Clark TR at 87,88,99; George Cotton TR at 130, 136-137; David McQuiddy TR at 161).

The Sixth Circuit failed to recognize that a finding that age is one of the determining factors in a decision does not depend on direct evidence of such, but may be inferred from the totality of the circumstances. Carpenter, supra. and citations contained therein. If the totality of the circumstances is considered here, it is clear that age was a factor in the decision to terminate the plaintiff.

The Defendant terminated employees who were older and retained employees who were younger. This philosophy of management was expressed by the President of

the Defendant in a newspaper article (Plaintiff's Exhibit No. 5) and affirmed by his testimony. (David McQuiddy TR pp.175-176). No criteria was established to prevent this philosophy from resulting in discrimination based on age. If this Court fails to require a defendant to adopt a least detrimental alternative means test in a case such as this, then prohibition against age discrimination as we know it, will cease to exist.

Thus, the Sixth Circuit, erred in affirming the District Court's refusal to require more from the defendant than a simple, self-serving statement that the decision to terminate the plaintiff was for a reason other than her age. The court erred in failing to require the defendant to show that they undertook steps to reasonably and objectively determine the qualifications of the employees so that a reasonable decision could be made.

II. The Sixth Circuit's holding of the District Court. It was not disputed that the printing industry in Nashville, Tennessee, has, historically, been divided into two types of work, mens and womens. (Willie Mai Speck

TR at 8,19,27; James Atwood TR at 66; Wallace Clark TR at 101-102; David McQuiddy TR at 166). This division of labor existed at the Defendant's plant at all times while the Plaintiff was employed in the binder department. Women were paid substantilly less than men, and job openings in traditionally mens' work (machine operators) were not posted within the plant so as to give somen an opportunity to apply for such positions. (Willie Mai Speck TR at 8,18,19; James Atwood TR at 66; Wallace Clark TR at 102; David McQuiddy TR at 164,166). In fact, the only woman to ever occupy the position of machine operator was the Plaintiff. (Willie Mai Speck TR at 9,19; James Atwood TR at 58-59).

In its memorandum opinion, the District Court cited the Plaintiff's position as the only woman receiving "man's pay" and doing "man's work" as evidence of the fact that the dicision to terminate the Plaintiff was not motivated on account of her sex. (Memorandum pp.6-7). In so holding, the District Court ignores the "totality of circumstances" upon which a discriminatory intent can be found.

As has been noted, the District court concluded, properly, that the Plaintiff made out a prima facie case of sex discrimination. (Memorandum p.3). The court, however, went on to sustain the affirmative defense of the Defendant of financial necessity in laying off the Palintiff. To do so, the court was required to ignore the history of the industry and the context of that history as it relates to the decision to terminate the Plaintiff. When lay offs were made necessary in March of 1982, nine (9) of the twelve(12) employees layed off were women. (David McQuiddy TR at 157).

Here again, the Sixth Circuit ignored the fact that "discriminatory intent can be proved through...circumstantial evidence". U.S. Postal Service Board of Governors v. Aikens, 460 U.S. at 714 Note 3, 103 S.Ct. at 1481, 75 L.Ed.2d at 409. The court, fails to see the forest because of the trees. It focuses on the Plaintiff's history as the only woman in a "man's" job while ignoring the persistens and undisputed history of the industry which traditionally discriminates against women. (Memorandum pp.6-7). The failure to consider this "totality of circumstances" renders the District

Court's decision that the Plaintiff failed to carry her burden of proof clearly erroneous.

III. The Sixth Circuit's decision of the District Court.

Very succinctly put, the Defendant terminated employees who were older and retained employees who were younger. This philosophy of management was expressed by the President of the Defendant in a nespaper article (Plaintiff's Exhibit No. 5) and affirmed by President McQuiddy during his testimony (David McQuiddy TR pp. 175-176).

The Sixth Circuit seemingly ignored the objective evidence that the March 1982 lay-offs resulted in the laying off of the majority of workers over the age of forty (40), while workers under the age of forty (40) were retained. (Willie Mai Spect TR at 42,47,51; James Atwood TR at 59; Wallace Clark TR at 84; David McQuiddy TR at 150). In particular, two employees who assumed the functions performed by the Plaintiff, Jeff Young and George Cotton were under the age of forty (40)

(Young age 25, Cotton age 35). (James Atwood TR at 58; George Cotton TR at 111,123).

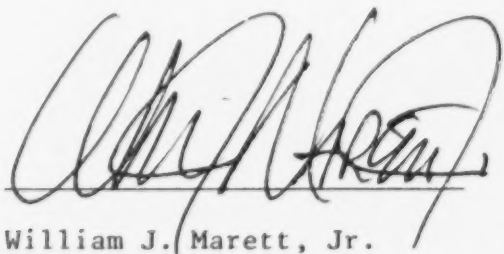
The District Court ignored these factors by stating that the lay-offs were not based on age, but were the result of the elimination of the position of rover. The District Court's findings, however, completely ignores the provisions of the Defendant's Employee Manual which provides that in assessing lay-offs, seniority will be considered, and that lay-offs take place in the inverse ranking of an employee's seniority. (Wallace Clark TR pp. 96, 97). However, seniority did not enter into the discussion regarding as to who should be layed off at Defendant's plant in March of 1982, except to note that the Defendant was opening itself up to litigation due to Plaintiff's seniority. (David McQuiddy TR p.167).

As this Court has noted, an employees written statements of policy creates a contractual right in the employee. Boyinton v. TWR, Inc., (6th Cir. January 17, 1986), citing Toussaint V. Blue Cross and Blue Shield of Michigan, 292 N.W.2d 880 (Mich. 1980). The failure

of the company to follow its own policies, as well as the "totality of the circumstances" leaves no doubt that the actions of the Defendant were motivated by an improper desire to rid the company of older employees. As such, the District Court's determination that age was not a factor in the decision to terminate the Plaintiff, is clearly erroneous.

CONCLUSION

For the above and foregoing reasons, Petitioner prays that his Honorable Court grant her a Writ of Certiorari to review the decision of United States Court of Appeals for the Sixth Circuit.



William J. Marett, Jr.
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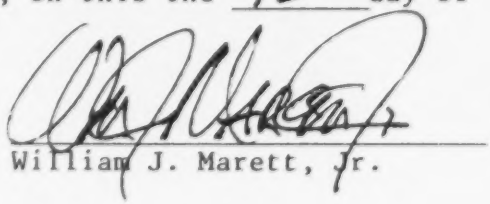
Nashville, Tennessee 37219
(615) 256-2111

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing has been mailed, postage prepaid, to Scott Derrick, Esq., Harris Robinson and Aden, Nashville City Bank Building, P.O. Box 2524, Nashville, Tennessee 37201, on this the 13th day of May, 1987.



William J. Marett, Jr.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

WILLIE MAI SPEC,	)	
	)	
PETITIONER,	)	
	)	
V.	)	No._____
	)	
MCQUIDDY PRINTING CO., INC.,	)	
	)	
RESPONDENT	)	

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

APPENDIX TO THE PETITION OF WILLIE MAI SPECK
FOR A WRIT OF CERTIORARI

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Nashville, Tennessee 37219
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Statutory Provisions Involved

Complaint filed May 27, 1983,

Answer filed August 1, 1983,

Order of Dismissal Entered by the United States District Court dated September 20, 1985 and accompanying memorandum

Order of the United States Court of Appeals for the Sixth Circuit dated February 16, 1987 and decanting opinion

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways

of meeting problems arising from the impact of age on employment.

(Pub.L. 90-202, § 2, Dec. 15, 1967, 82 Stat. 602.)

§622. Education and research program; recommendation to Congress

(a) The Secretary of Labor shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the Secretary of Labor shall carry on a continuing program of education and information, under which he may, among other measures-

(1) undertake research, and promote research, with a view to reducing barriers to the employement of older persons, and the promotion of measures for utilizing their skills;

(2) publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;

(3) foster through the public employement service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;

(4) sponsor and assist State and community informational and educational programs.

(b) Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of the title.

§ 623. Prohibition of age discrimination

(a) Employer practices

It shall be unlawful for an employer-

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any

individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce to wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee

or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member of applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or dicipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization -

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification

reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Entitlement to coverage under group health plan

(1) For purposes of this section, any employer must

provide that any employee aged 65 through 69, and any employee's spouse aged 65 through 69, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

(2) For purposes of paragraph (1), the term "group health plan" has the meaning given to such term in section 162(i)(2) of Title 26.

(g) Practices of foreign corporations controlled by American employers; foreign persons not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the -

(A) interrelation of operation,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control,

of the employer and the corporation.

§ 624. Study by Secretary of Labor; reports to President and Congress; scope of study; implementation of study; transmittal date of reports

(a)(1) The Secretary of Labor is direected to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include -

(A) an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 631(a) of this

title to 70 years of age;

(B) a determination of the feasibility of eliminating such limitation;

(C) a determination of the feasibility of raising such limitation above 70 years of age; and

(D) an examination of the effect of the exemption contained in section 631(c) of this title, relating to certain executive employees, and the exemption contained in section 631(d) of this title, relating to tenured teaching personnel.

(2) The Secretary may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

(b) The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

§ 625. Administration

The Secretary shall have the power -

(a) Delegation of functions; appointment of personnel; technical assistance

to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this chapter;

(b) Cooperation with other agencies, employees, labor organizations, and employment agencies

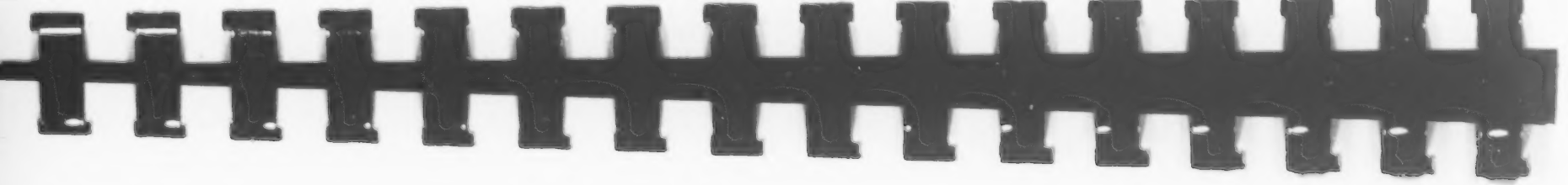
to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this chapter.

§ 626. Recordkeeping, investigation, and enforcement

(a) Attendance of witnesses; investigations, inspections, records, and homework regulations.

The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title.

(b) Enforcement; prohibition of age discrimination



under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion

The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title, and subsection (c) of this section. Any act prohibited under section 623 of this title shall be deemed to be a prohibited act - under section 215 of this title. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title: Provided, That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action broght to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement

or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chaper through informal methods of concillation, conference, and persuasion.

(c) Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial

(1) Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: Provided, That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

(2) In an action brought under paragraph (1), a person

shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a reult of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

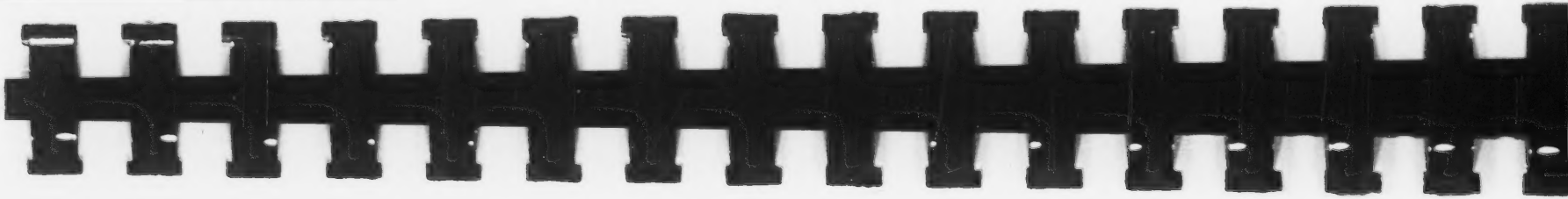
(d) Filing of charge with Commission; timeliness; concillation, conference, and persuasion

No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed-

(1) within 180 days after the alleged unlawful practice occurred; or

(2) in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

Upon receiving such a charge, the Commission shall



promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

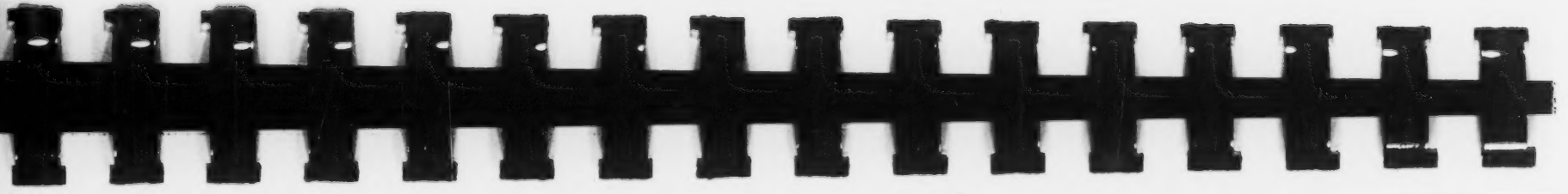
(e) Statute of limitations; reliance in future on administrative ruling, etc.; tolling

(1) Sections 255 and 259 of this title shall apply to actions under this chapter.

(2) For the period during which the Equal Employment Opportunity Commission in attempting to effect voluntary compliance with requirements of this chapter through informal methods of conciliation, conference, and persuasion pursuant to subsection (b) of this section, the statute of limitations as provided in section 255 of this title shall be tolled, but in no event for a period in excess of one year.

§ 627. Notices to be posted

Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Equal Employment Opportunity Commission setting



forth information as the Commission deems appropriate to effectuate the purposes of this chapter.

§ 628. Rules and regulations; exemptions

In accordance with the provisions of subchapter II of chapter 5 of Title 5, the Equal Employment Opportunity Commission may issue such rules and regulations as it may consider necessary or appropriate for carrying out this chapter, and may establish such reasonable exemptions to and from any or all provisions of this chapter as it may find necessary and proper in the public interest.

§ 629. Criminal penalties

Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Equal Employment Opportunity Commission while it is engaged in the performance of duties under this chapter shall be punished by a fine of not more than $500 or by imprisonmen for not more than one year, or both: Provided, however, That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

§ 630. Definitions

For the purposes of this chapter -

(a) The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.

(b) The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: Provided, That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but such term does not include the United States, or a coporation wholly owned by the Government of the United States.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of

the United States.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference general committee, joint or systems board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) if fifty or more prior

to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization -

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended (29 U.S.C.A. § 151 et seq.), or the Railway Labor Act, as amended (45 U.S.C.A. § 151 et sep.); or

(2) although not certified, is a national or international labor organization or local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees or employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with repsect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision. The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

(g) The term "commerce means trade, traffic, commerce, transportation, transmission, or communication

among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business or industry in commerce or in which labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C.A. § 401 et seq.).

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Buam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shalf Lands Act (43 U.S.C.A. § 1331 et seq.).

§ 631. Age limits

(a) Individuals at least 40 but less than 70 years of age

The prohibitions in this chapter shall be limited

to individuals who are at least 40 years of age but less than 70 years of age.

(b) Employees or applicants for employment in Federal Government

In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 633a of this title, the prohibitions established in section 633a of this title shall be limited to individuals who are at least 40 years of age.

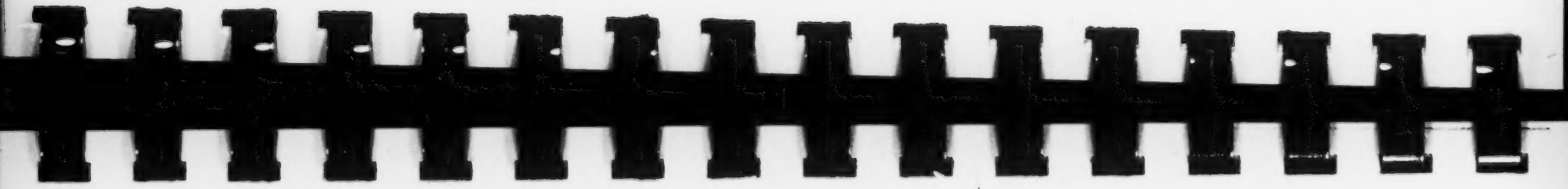
(c) Bona fide executive or high policymakers

(1) Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age but not 70 years of age, and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee which equals, in the aggregate, at least $44,000.

(2) In applying the retirement benefit test of paragraphy (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contricutions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

§ 632. Annual report to Congress

The Equal Employment Opportunity Commission shall submit annually in January a report to the Congress covering its activities for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as it may find advisable. Such report shall contain an evaluation and appraisal by the Commission of the effect of the minimum and maximum ages established by this chapter, together with its recommendations to the Congress. In making such evaluation and appraisal,



the Commission shall take into consideration any changes which may have occurred in the general age level of the population, the effect of the chapter upon workers not covered by its provisions, and such other factors as it may deem pertinent.

§ 633. Federal-State relationship

(a) Federal action superseding State action

Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

(b) Limitation of Federal action upon commencement of State proceedings

In the case of alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title before the expiration of sixty days after proceedings have been commenced under the

State law, unless such proceedings have been earlier terminated: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

§ 633a. Nondiscrimination on account of age in Federal Government employment

(a) Federal agencies affected

All personnel actions affecting employees or applicants for employment who are at least 40 years of age (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United

States Postal Service and the Postal Rate Commission, in those united in the government of the District of Columbia having positions in the competitive service, and in thos units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on age.

(b) Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in Library of Congress; remedies; rules, regulations, orders, and Instructions of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification.

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission is authorized to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effecturate the policies of this section. The Equal Employment Opportunity Commission shall issue such rules, regulations, orders, and in-

stuctions as it deems necessary and appropriate to carry out its responsibilities under this section.

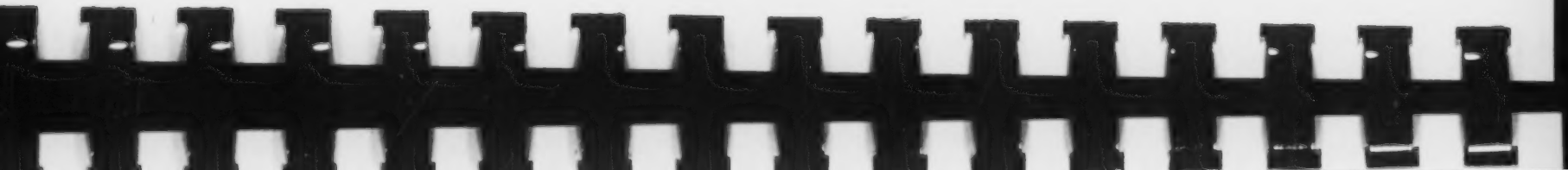
The Equal Employment Opportunity Commission shall -

(1) be responsible for the review and evaluation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a) of this section;

(2) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and

(3) provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Equal Employment Opportunity Commission which shall include a provision than an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed



by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil actions; jurisdiction; relief

Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

(d) Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices

When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission

not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

(e) Duty of Government agency or official

Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

(f) Applicability of statutory provisions to personnel action of Federal departments, etc.

Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this chapter, other than the provisions of section 631(b) of this title and the provisions of this section.

(g) Study and report to President and Congress by Equal Employment Opportunity Commission; scope

(1) The Equal Employment Opportunity Commission shall undertake a study relating to the effects of the amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, and the effects of section 631(b) of this title.

(2) The Equal Employment Opportunity Commission shall transmit a report to the President and to the Congress containing the findings of the Commission resulting from the study of the Commission under paragraph (1) of this subsection. Such report shall be transmitted no later than January 1, 1980.

§ 634. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out this chapter.

SUBCHAPTER VI - EQUAL EMPLOYMENT OPPORTUNITIES

§ 2000e. Definitions

For the purposes of this subchapter -

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies,

joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private member ship club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or

more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization -

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended;

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as ther representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees withint the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof;or within the District of Columbia,

or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any govermental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prosepctive employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of

sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

§ 2000e-1 Subchapter not applicable to employment of aliens outside State and individuals for performance of activities of religious corporations, associations, educational institutions, or societies

This subchapter shall not apply to an employer with

respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

§ 2000e-2 Unlawful employment practices

Employer practices

(a) It shall be an unlawful employment practice for an employer -

(1) to fail or refuse t- hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national orig[illegible]; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or ten to deprive any individual of employment opportunities or otherwise adversely affect his

status as an employee, because of such individual's race, color, religion, sex, or national origin.

Employment agency practices

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

Labor organization practices

(c) It shall be an unlawful employment practice for a labor organization -

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely

affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

Training programs

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

Business or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees,

for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learining to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other

educational institution or institution of learning is directed toward the propagation of a particular religion.

Members of Communist Party or Communist-action or Communit-front organizations

(f) As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

National Security

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization

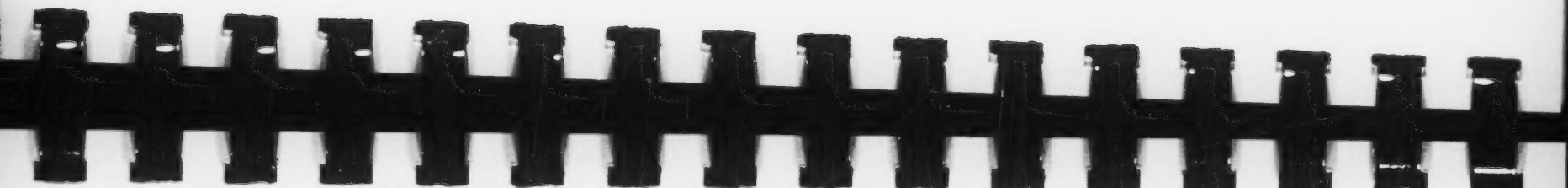
to fail or refuse to refer any individual for employment in any position, if -

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; an

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

Seniority or merit system; quantity or quality of production; ability tests; compensation based on and authorized by minimum wage provisions

(h) Notwithstanding any otherprovision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by



quantity or quality or production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 260(d) of Title 29.

Business or enterprises extending preferential treatment to Indians

(i) Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian re-

servation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

Preferential treatment not to be granted on account of existing number or percentage imbalance

(j) Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the reace, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in

comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

§ 2000e-3. Other unlawful employment practices

Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter

Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exceptions

(b) It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limi-

tation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

§ 2000e-4 Equal Employment Opportunity Commission Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duites of Chairman; appointmen of personnel; compensation of personnel

(a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall

continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchpater III of chapter 53 Title 5, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5.

General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(b)(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

Exercise of powers during vacancy; quorum

(c) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

Seal; judicial notice

(d) The Commission shall have an official seal which shall be judicially noticed.

Reports to Congress and President

(e) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disdisbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

Principal and other offices

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

Powers of Commission

(g) The Commission shall have power -

(1) to cooperate with and, with their consent, utilize regional, State, local and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

Cooperation with other departments and agencies in performance of educational or promotional activities

(h) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

Personnal subject to political activity restrictions

(i) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5, notwithstanding any exemption contained in such section.

§ 2000e-5. Enforcement provisions

Power of Commission to prevent unlawful employment practices

(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

Charges by person aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents; of notice; Investigation by Commission; contests of charges; prohibition or disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the of the Commission, alleging that an employer, employment

agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in prceeding commenced under State or local

law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, theCommission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement of the filing by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding

is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

State or local enforcement proceedings; notification of state or local authority; time for action on charges by Commission

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occuring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy

the practice alleged.

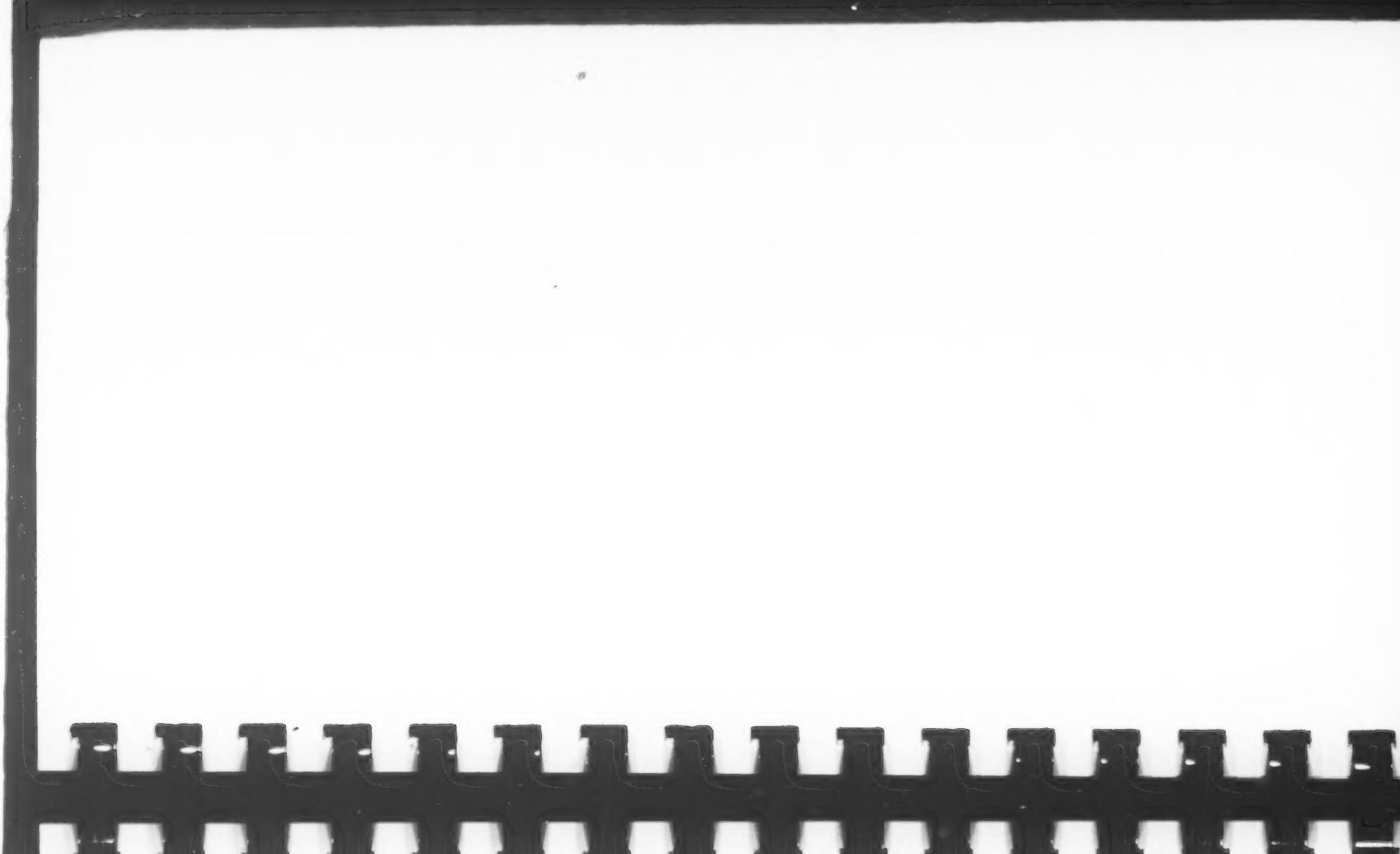
Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency

(e) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the

State or local agency.

Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(f)(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the



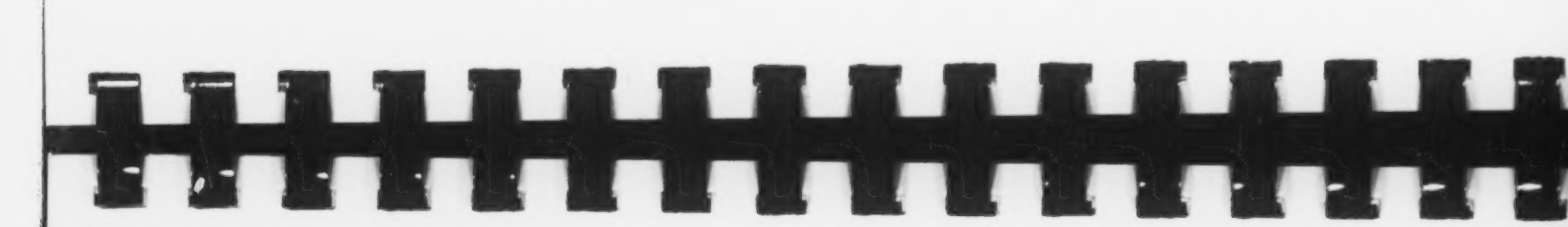
Commission, the Commission shall take no further action and shall refer the cast to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is dismissed by the Commission, or if within onehundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has no filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the

giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission

and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

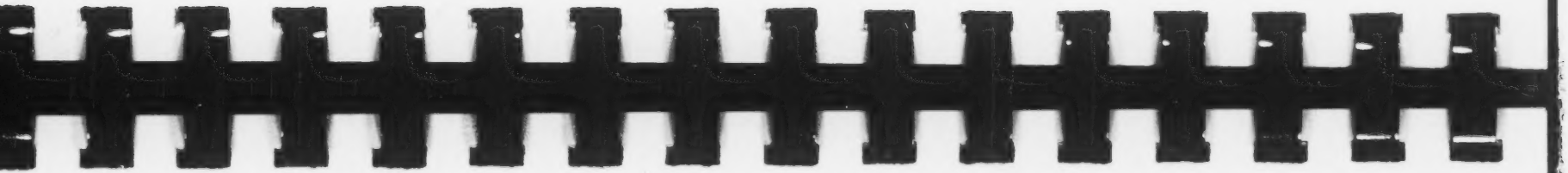
(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are main-



tained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for



hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may included, but is not limited to, reinstatement of hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts

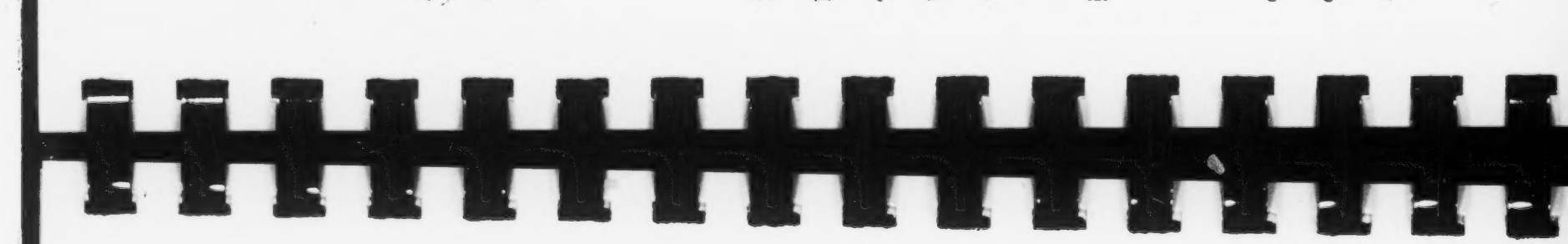
arnable with reasonable diligence by the person or
ersons discriminated against shall operate to reduce
ne back pay otherwise allowable. No order of the
ourt shall require the admission or reinstatement of
n individual as a member of a union, or the hiring,
einstatement, or promotion of an individual as an
mployee, or the payment to him of any back pay, if
ach individual was refused admission, suspended, or
xpelled, or was refused employment or advancement or
as suspended or discharged for any reason other than
iscrimination on account of race, color, religion, sex,
national origin or in violation of section 2000e-3
i) of this title.

Provisions of sections 101 to 115 of Title 29
not applicable to civil actions for prevention
of unlawful practices

(h) The provisions of sections 101 to 115 of Title 29
hall not apply with resepct to civil actions brought
nder this section.

Proceedings by Commission to compel compliance
with judicial orders

(i) In any case in which an employer, employment
gency, or labor organization fails to comply with an
rder of a court issued in a civil action brought under



his section, the Commission may commence proceedings
o compel compliance with such order.

Appeals

(j) Any civil action brought under this section and
ny proceedings brought under subsection (i) of this
ection shall be subject to appeal as provided in
ections 1291 and 1292, Title 28.

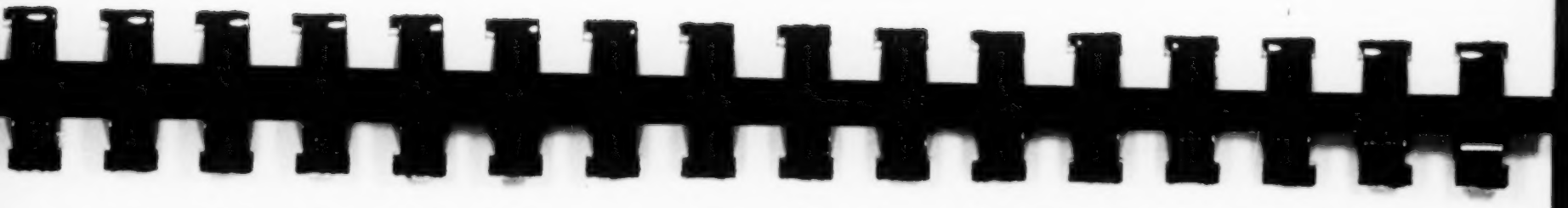
Attorney's fee; liability of Commission and
United States for costs

(k) In any action or proceeding under this subchapter
he court, in its discretion, may allow the prevailing
arty, other than the Commission or the United States,
reasonable attorney's fee as part of the costs, and
he Commission and the United States shall be liable
or costs the same as a private person.

2000e-6. Civil actions by Attorney General

Complaint

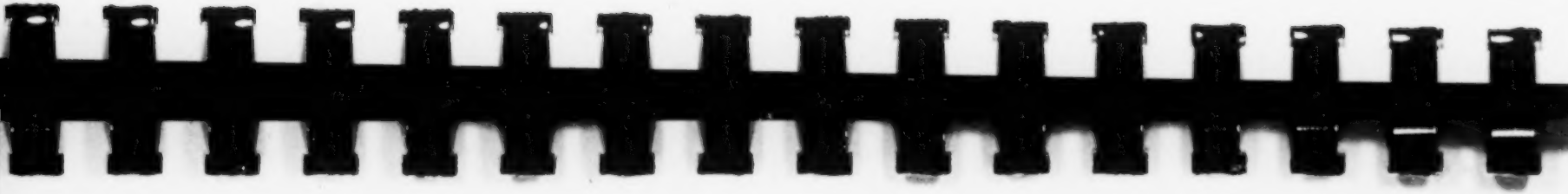
(a) Whenever the Attorney General has a reasonable
ause to believe that any person or group of persons is
ngaged in a pattern or practice of resistance to the
ull enjoyment of any of the rights secured by this



subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

Jurisdiction; three-judge district court for cases of general public importance; hearing, determination, expedition of action, review by Supreme Court; single-judge district court; hearing, determination, expedition of action

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the



Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practiable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

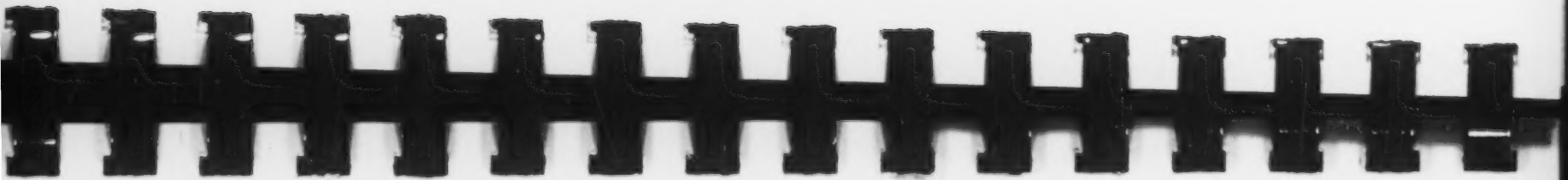
In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending

immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

Transfer of function, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

(c) Effective two years after march 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balance of appropriateion, allocation, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits,



and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

Transfer of funtions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

(d) Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

(e) Susequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by on or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures

set forth in section 2000e-5 of this title.

§ 20003-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

§ 2000e-8. investigations

Examination and copying of evidence related to unlawful employment practices

(a) In connection with any investigation of a charge filed under sections 2000e-5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that related to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

Cooperation with State and local agencies administering State fair employmen practices laws; participation in contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agrements

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commissions may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases

specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of the effective enforcement of this subchapter.

Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

(c) Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to the sub-

chapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed decription of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the cases may be, may grant appropriate relief.

If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person if found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, em-

ployment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to their subsection.

Prohibited disclosures; penalties

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

§ 200e-9. Conduct of hearings and investigations pursuant to section 161 of Title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 shall apply.

§ 20003-10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

§ 2000e-11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preferences for

veterans.

§ 2000e-12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or recind suitable procedural regulations to carry out the provisision of this subchapter. Regualations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5.

(b) In any action or proceding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he

failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subcapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing is determined by judicial authority not to be in conformity with requirements of this subchapter.

§ 2000e-13. Application to personnel of Commission of sections 111 and 1114 of Title 18; punishment for violation of section 1114 of Title 18

The provisions of sections 111 and 1114, Title 18, shall apply to officers, agents, and employees of the Commission in the performance of their officeial duties. Notwithstanding the provisions of sections 111 and 114 of Title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions

under this Act shall be punished by imprisonment for any term of year or for life.

§ 2000e-14. Coordination of efforts and elimination of competition among Federal departments, agencies, etc. in implementation and enforcement of equal employment opportunity legislation, orders, and policies; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further

promote the purposes of this section.

§ 2000e-15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affedtec by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) represnetatives of employers, labor organizations, and employment agencies who

will be subject to this subchapter.

§ 2000e-16. Employment by Federal Government

Discriminatory practices prohibited; employees or applicants for employment subject to coverage

(a) All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5, in executive agencies as defined in section 105 of Title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the legislative and judicial branches of the Federal Government having positions in the competitive service, and in the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

Enforcement powers of Commission; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

(b) Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall -

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appro-

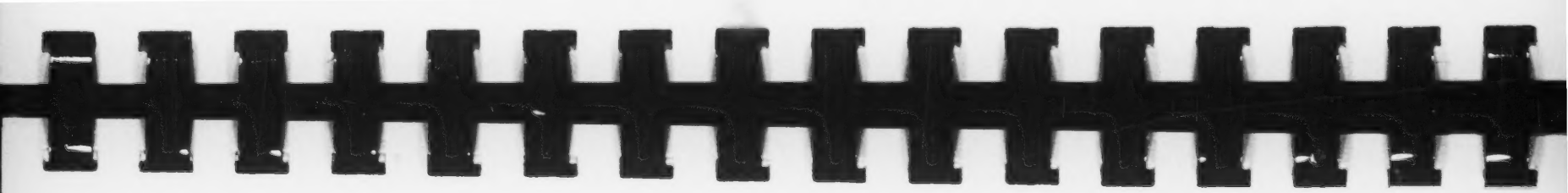
priate unit referred to in subsection (a) of the section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department agency, or unit shall compny with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to -

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for the employees to advance so as to per-



form at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

(c) Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit

on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order as such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title, in which civil action the head of the department, agency or unit, as appropriate, shall be the defendant.

Section 2000e-5(f) through (k) of this title applicable to civil actions

(d) The provisions of section 2000e-5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder.

Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

(e) Nothing contained in the Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

§ 2000e-17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and

adjudication under the provisions of section 554 of Title 5, and the following pertinent sections; Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

AT NASHVILLE

WILLIE MAI SPECK,	)	
	)	
	)	
Plaintiff	)	
	)	
	)	Civil Action No.
vs.	)	
	)	_____
	)	
McQUIDDY PRINTING CO., INC.,	)	
	)	
	)	
Defendant	)	

C O M P L A I N T

Plaintiff, Willie Mai Speck, alleges as follows:

PARTIES

1.

Plaintiff is and was at all times material hereto a resident of Nashville, Tennessee. Defendant, McQuiddy Printing Co., Inc., is a corporation or partnership doing business in the State of Tennessee in this Federal District.

2.

Plaintiff was at all times material hereto an employee of Defendant within the meaning of § 11(f) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 630(f), and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e(f).

3.

Plaintiff is a female and was at all times material hereto at least forty be less than seventy years of age.

4.

Defendant is a corporation doing business in interstate commerce and is an employer within the meaning of §11(b) of the Age Discrimination in Employment Act of 1967, as amended, 20 U.S.C. § 630(b), and Title VII of the Civil Rights Acto of 1965, as amended, 42 U.S.C. § 2000e(b).

JURISDICITION

5.

Jurisdiction in this matter rests with the Court by virtue of the Age Discrimination in Employment Act of 1967, as amended, 20 U.S.C. §§ 621-634 (hereinafter the ADEA), by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 20003 to 2000e-17 (hereinafter Titale VII), and Pendant Jurisdiciton of state law claims.

CAUSE OF ACTION

6.

Plaintiff was employed by Defendant for approximately thirty-two years. On or about March 19, 1982, Plaintiff was terminated by Defendant. At all times material hereto, Plaintiff was qualified to perform the job from which she was terminated.

7.

Defendant retained male employees younger than Plaintiff, performing identical tasks, who had less seniority than Plaintiff.

8.

Defendant willfully discriminated against Plaintiff with respect to her compensation, terms, conditions, and privileges of employment, because of her age and sex, in the termination, refusal to reinstate, and denial of health and retirement benefits.

9.

Defendant's termination of Plaintiff breached its employment contract with Plaintiff.

10.

As a result of the aforementioned actions of Defendant, Plaintiff has sustained, and will continue to sustain in the future, irrevocable harm and substantial monetary damages.

EXHAUSTION

11.

Plaintiff filed a Charge with the Equal Employment Opportunity Commission on the 28th day of February, 1983, any by doing so has fully complied with the provisions of the ADEA, 29 U.S.C. § 626(d), and with the provisions of Title VII, 42 U.S.C. § 2000e-5. Plaintiff received a Notice of Right to Sue Letter from the EEOC less than ninety (90) days prior to filing this suit.

PRAYER

Plaintiff, Willie Mai Speck, requests the Court to:

a.

Enter a monetary judgment on her behalf against Defendant pursuant to the provisions of the ADEA, 29 U.S.C. §§ 621-634, adn Title VII, 42 U.S.C. §§ 2000e to 2000e-17.

b.

Enter a monetary judgment on her behalf against Defendant for liquidate damages pursuant to the provisions of the ADEA, 29 U.S.C. § 626(b).

c.

Enter an award against Defendant for reasonable attorney fees pursuant to the provisions of the ADEA, 29 U.S.C. § 626(b), and Title VII, 42 U.S.C. § 2000e-5(k).

d.

Enter injunctive relief pursuant to the provisions of the ADEA, 20 U.S.C. § 626(b), and Title VII, 42 U.S.C. § 2000e-5(g), compelling Defendant to recall Plaintiff to the position which she held prior to the discriminatory actions or to a comparable position, and restraining Defendant from engaging in additional discriminatory actions against Plaintiff.

e.

Plaintiff seeks $100,000 for breach of employment contract.

f.

Plaintiff seeks $300,000 for intentional infliction of emotional distress.

g.

Enter an order effecting such action and further relief in the premises as shall be agreeable to equity and good conscience and effectuating the purposes of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17.

Plaintiff requests a jury trial in this matter as to ADEA and state law claims.

Lunn Agee, Esq.

Michael Hamilton, Esq.
702 Church St., P.O.Box 1475
Nashville, Tennessee 37202
(615) 254-6666

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WILLIE MAI SPECK,	)	
	)	
Plaintiff	)	
	)	Civil Action No. 3-83-0417
vs.	)	
	)	Judge Nixon
McQUIDDY PRINTING CO., INC.,	)	
	)	
Defendant	)	

A N S W E R

1. The defendant has insufficient knowledge to either admit or deny plaintiff's residence. It admits that McQuiddy Printing Co., Inc. is a Tennessee coporation doing business in the Middle District of Tennessee.

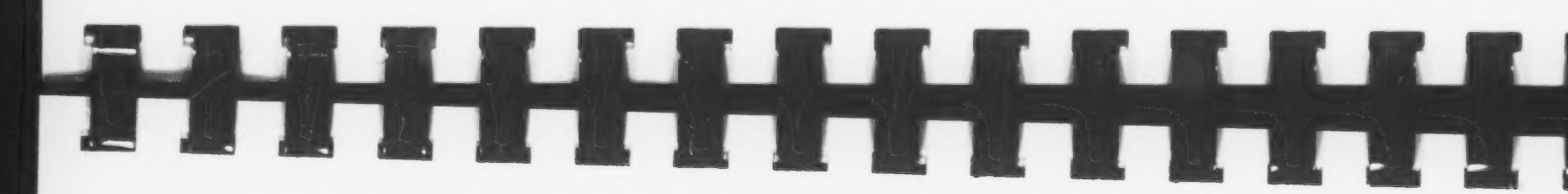
2. It is admitted that plaintiff was "employee" within the meaning of 29 U.S.C. §§ 630(f), and within the meaning of 42 U.S.C. § 2000e(f).

3. Admitted.

4. Admitted.

5. Admitted.

6. It is admitted that plaintiff was employee for defendant for approximately thirty-two years. It is admitted that plaintiff was laid off on approximately March



19, 1982, and that said lay-off was made permanent shortly thereafter. It is denied that plaintiff was at all times qualified to perform the job from which she was terminated.

7. It is admitted that younger males were retained by the defendant in its lay-off, but it is denied that they were performing identical tasks. It is admitted that the younger males had less seniority. The defendant also retained females older than plaintiff who had more seniority than plantiff.

8. It is denied that the defendant wilfully discriminated against the plaintiff because of her age and sex. The defendant will show this Court that the lay-off by the defendant in the Spring of 1982 was done because of the financial situation of the defendant, with the survivial of the defendant in mind and not on the basis of any discriminatory criteria.

9. Denied.

10. Denied.

11. It is denied that plaintiff filed a charge with the Equal Employment Opportunity Commission on the 28th day of February, 1983, but rather that on the 28th day

of February, 1983, the EEOC issued a determination of the plaintiff's complaint that "Examination of the evidence indicates that there is not reasonable cause to believe this allegation is true." It is admitted that plaintiff received this notice and Notice of Right to Sue less than Ninety (90) days prior to bringing this action.

12. The defendant would aver that plaintiff's complaint fails to state a claim upon which relief may be granted.

13. It is denied that the plaintiff is entitled to any relief upon any of the claims from this court.

Harlan Dodson, III

A. Scott Derrick

DODSON, HARRIS, ROBINSON, & ADEN
900 Nashville City Bank Bldg.
P.O. Box 2524
Nashville, Tennessee 37219
(615) 244-6840
Attorneys for Defendant

C E R T I F I C A T E

I hereby certify that I have this day forwarded a true copy of the foregoing Answer to Mr. Michael Hamilton, 702 Church Street, P. O. Box 1457, Nashville, Tennessee 37202, as Attorney for the Plaintiff.

This 1st day of August, 1983.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WILLIE MAI SPECK	)	
	)	
v.	)	No. 3-83-0417
	)	Judge Higgins
McQUIDDY PRINTING CO., INC.	)	

O R D E R

In accordance with the memorandum contemporaneously filed, the Court finds in favor of the defendant, McQuiddy Printing Co., Inc., and against the plaintiff, Willie Mai Speck, on both the Title VII and Age Discrimination in Employment Act claims brought by the plaintiff. Accordingly, the plaintiff's action is dismissed on the merits.

It is so ORDERED.

Thomas A. Higgins
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WILLIE MAI SPECK	)	
	)	
v.	)	No. 3-83-0417
	)	Judge Higgins
McQUIDDY PRINTING CO., INC.	)	

M E M O R A N D U M

The plantiff, Willie Mai Speck, brought this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e and the Age Discrimination in Employment act (ADEA), 29 U.S.C. § 621 et seq. The Court has subject matter jurisdiction in this case pursuant to 42 U.S.C. § 2000e-5(f) (3) and 20 U.S.C. § 626 (c).

This case came to trial before the Court without a jury on January 30, 1985. For the reasons stated below, the Court finds in favor of the defendant, McQuiddy Printing Co., Inc.

The defendant, who is an employer pursuant to both Title VII and the ADEA, see, 42 U.S.C. § 2000e(b), and 29 U.S.C. § 630(b), discharged the plaintiff, a 59-year-old female, on March 19, 1982. The plaintiff began work in the defendant's bindery department in 1950. During the plaintiff's employment with the defendant, which was continuous from her time of hire until 1982, she was the

female machine operator. She operated many of the machines in the bindery department and could service and repair bindery equipment.

About 18 months prior to her discharge, the plaintiff was given the job of rover. A rover is not assigned to a particular machine in the bindery, but works on any machine, on which he or she is qualified, when the operator is not present. Both the plaintiff and Bob Bardill worked as rovers and were paid the same amount. Ms. Speck was the highest paid woman in the bindery department.

At the time Ms. Speck was discharged, McQuiddy Printing Co. was experiencing financial difficulties. As a means of reducing its overhead and economizing, McQuiddy Printing laid off employees for the first time in its history. Both Ms. Speck and Mr. Bardill were discharged from their jobs as rovers.

I. Title VII

Title VII prohibits discrimination in employment on the basis of sex. 42 U.S.C. § 2000e-2. The Supreme Court in Texas Department of Community Affairs v. Burdine,

450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981), established guidelines for the burden of proof in gender discrimination cases under Title VII of the Civil Rights Act of 1964.

The plaintiff must first establish a prima facie case of sex discrimination. Id., 450 U.S. at 253-54, 101 S. Ct. at 1093, 67 L. Ed. 2d at 215. This burden can be met by satisfying the four element test of McDonnell Douglas v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), as modified for sex discrimination cases. The McDonnell Douglas test[1] requires the plaintiff to show (1) that she belongs to the protected class, (2) that she is qualified for the job, (3) that despite her qualifications she was rejected, and (4) that she was replace by a male. See, Texas Department of Community Affairs v. Burdine,450 U.S. at 253 n. 6, 101 S. Ct. at 1094, 67 L. Ed. 2d at 215.

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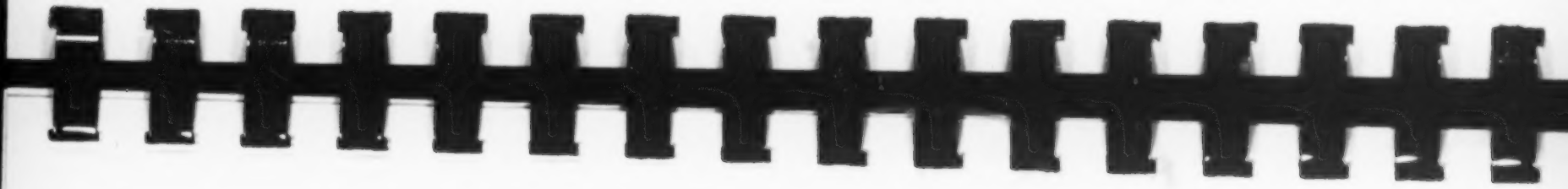
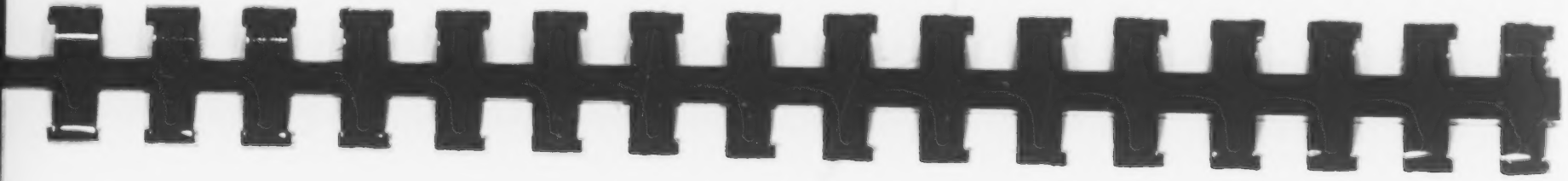
[1]The McDonnell Douglas test was formulated for a Title VII racially discriminatory hiring suit, but it has been widely modified to fit other discriminatory practices and other employment dicisions besides hiring. See e.g., Williams v. Caterpillar Tractor Co., No. 84-5492, slip op. at 4 (6th Cir. Aug. 9, 1985) (age discrimination discharge case).



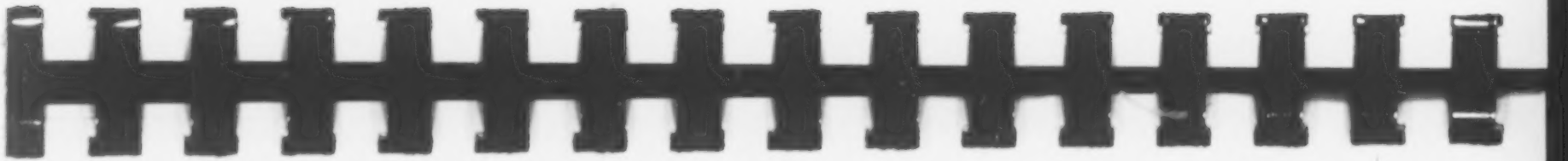
Once the plaintiff makes out a prima facie case, thus raising a presumption of discrimination, the burden shifts to the defendant to articulate some legitimate nondiscriminatory reason for the employment decision. If the employer produces some legitimate nondiscriminatory reason, then the plaintiff must prove by the preponderance of the evidence that the articulated reason was a pretext for discrimination in employment. The plaintiff always retains the ultimate burden of proving discrimination. Id., 450 U.S. at 253, 101 S. Ct. at 1093, 67 L. Ed. 2d at 215.

The plantiff has established a prima facie case of sex discrimination under the McDonnell Douglas guidelines. Ms. Speck is a member of the protected class and McQuiddy Printing Co. does not dispute that she was qualified for the job from which she was fired. McQuiddy Printing Co. eliminated the job of rover in its move to economize and, thus, no one replaced either Ms. Speck or Mr. Bardill. Instead, their duties were assumed as needed by the bindery department supervisor, Gene Cotton, who is a male. Hence, the Court finds



that the plaintiff, although not replaced by a male, has established a prima facie case of sex discrimination.

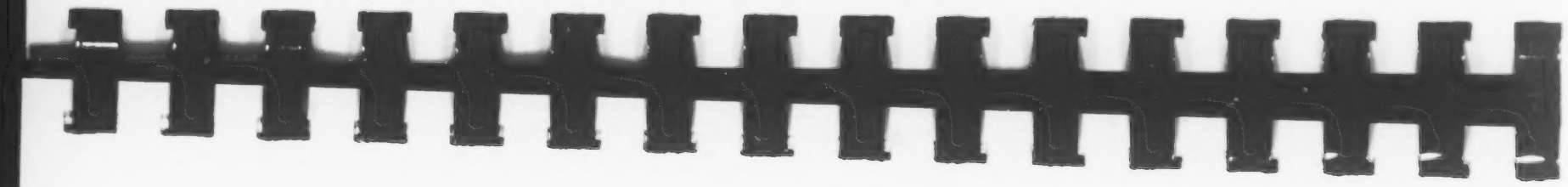
McQuiddy Printing asserts economic necessity as its reason for discharging the plaintiff, as well as the other employees who were fired. David Lipscomb McQuiddy, Jr., president and chief executive officer of the defendant, testified to the adverse economic situation of the company at the time of Ms. Speck's discharge. During the 1981 and 1982 fical years, the defendant had virtually no sales growth. For fiscal year 1981, the defendant had before tax income of approximately $150,000, for the fiscal year 1982, the defendant has a before tax loss of nearly $134,000. See, Defendant's Answers to Interrogatories. Mr. McQuiddy testified that in 1980 the soundest business decision would have been to liquidate the business since the real estate holdings and other assets of the company were more valuable than the business as an ongoing enterprise. Mr. McQuiddy made the decision, however, to remain in business and with that decision came the need to modernize equipment, and to cut costs.



McQuiddy Printing made a major capital outlay in equipment in fiscal year 1982 when it increased its investment in plant machinery by almost $1.2 million. See, Defendant's Answers to Interrogatories. The defendant decided to cut costs by stramlining the work force. The testimony of Wallace Clark, secretary/treasurer of the defendant, corroborated the poor financial condition of the company and the need to economize. The plaintiff does not dispute that McQuiddy Printing Co. faced a financial crisis and that it was of necessity forced to economize. Thus, the defendant has articulated a legitimate nondiscriminatory reason of economic necessity for its decision to fire the plaintiff.

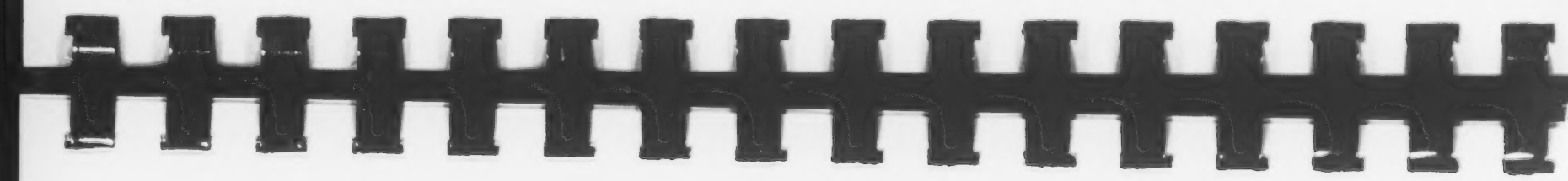
The plaintiff must show that this articulated reason is pretext, but the cumulative effect is not sufficient to sustain her burden.

The plaintiff suggest that the printing industry in general and McQuiddy Printing, in particular, discriminate against women in that women do had work which pays less than machine work which is done by men. Ray Hyde, an employee of Harris Press, also testified that women in the industry do hand work, which is lighter work than



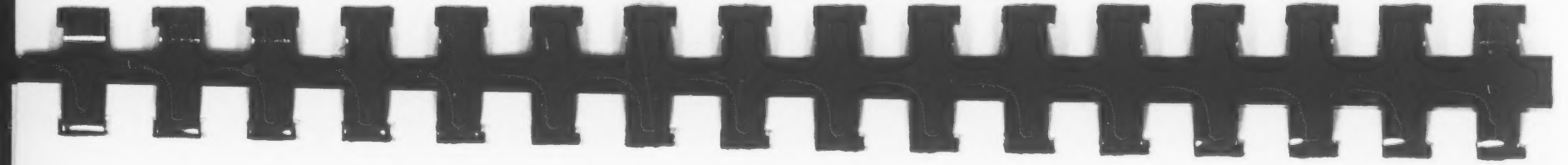
operating bindery machines. The only female machine operator ever employed by McQuiddy was the plaintiff. Moreover, the plaintiff testified that job openings were never posted and that women, who did hand work, were not given an opportunity to apply for jobs as machine operator. The plaintiff also complained that although she was not replaced, males were retained who did jobs she could have done. Specifically, Ms. Speck testified that she trained Jeff Young, a male in his twenties, to operate the stitcher-trimmer only a week before she was discharged. Ms. Speck, however, testified that she was never discriminated against because of her sex in the terms or conditions of her employment prior to her discharge. Mr. Hyde expressed his opinion that McQuiddy Printing Co. did not discriminate against Ms. Speck because of her sex. She was, in fact, the highest paid female in the bindery department and received the same pay as the other rover who was a male. Ms. Speck also stated that she had no problems with her supervisors or co-workers.

The Court finds that Ms. Speck was discharged because her particular job was eliminated and that the elimination of her job was not a pretext for sex discrimination. Mr. McQuiddy instructed the department super-



visors to determine which persons they could function without. Gene Cotton, Ms. Speck's supervisor, determined that rovers, who did not work on a specific machine, could be eliminated and machine operators could be cross-trained. Thus, both Ms. Speck's and Bob Bardill's jobs could be eliminated.

To carry her burden of persuasion in a sex discrimination case under a theory of disparate treatment, the plaintiff must prove that the employer acted with discriminatory intent. Texas Department of Community Affairs v. Burdine, 450 U.S. at 253, 101 S. Ct. at 1093, 67 L. Ed. 2d at 215; U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 715, 103 S. Ct. 1478, 1482, 75 L. Ed. 2d 403, 410 (1983). Discriminatory intent can be proved through either direct or circumstantial evidence. U.S. Postal Service Board of Governors v. Aikens, 460 U.S. at 714 n. 3, 103 S. Ct. at 1481, 75 L. Ed. 2d at 409. In the instant case, the plaintiff wants the Court to infer discriminatory motive from the alleged pattern of disparate treatment in distinguishing between women's jobs and men's jobs. The simple fact is that the plaintiff, according to her own



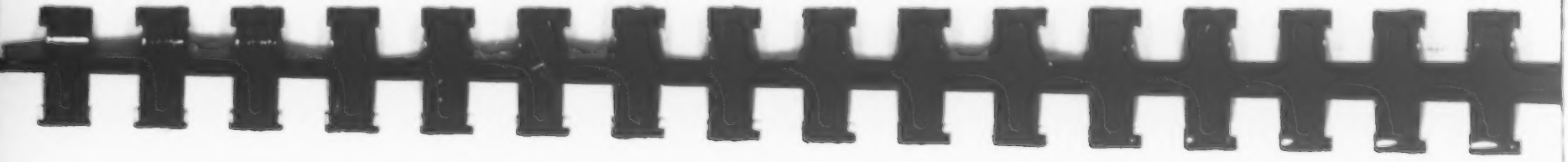
testimony, never experienced any discrimination at McQuiddy Printing Co. because of her sex and that her job was eliminated because of economic necessity. The Court concludes that the plaintiff has failed to carry her burden of proof in that she has failed to show discriminatory intent.

II. Age Discrimination in Employment Act

The Burdine analysis of the allocation of burden of proof in a Title VII action, as outlined above, is also applicable in cases under the ADEA. West v. Fred Wright Construction Co., 756 F.2d 31, 33 (6th Cir. 1985). The Sixth Circuit, however, has held that "the similarity between the ADEA and Title VII (does) not mandate rigid application of the McDonnell Douglas guidelines establishing a prima facie case in a Title VII discriminatory hiring suit, to a discriminatory discharge suit under the ADEA." Id. The Sixth Circuit employs a flexible case-bycase analysis which adopts "those standards (of Title VII) which further the ADEA's distinct legislative purposes." Id. See also, Blackwell v. Sun Electric Corp., 696 F.2d 1176, 1179 (6th Cir. 1983); Ackerman v. Diamond Shamrock, 670 F.2d 66,

70 (6th Cir. 1982); Sahadi v. Reynolds Chemical, 636 F.2d 1116,1117-19 (6th Cir. 1980). In Williams v. Caterpillar Tractor Co., No. 84-5491, slip op. at 4 (6th Cir. Aug. 9, 1985), the Sixth Circuit approved a modification of the McDonnell Douglas test in an ADEA constuctive discharge case. The plaintiff in Williams established a prima facie case when she showed, "(1) membership in the protected class; (2) qualification for the position; (3) replacement by a younger worker; and (4) discharge." Id. at 4. See also, Ackerman v. Diamond Shamrock Corp., 670 F.2d at 69.

The plaintiff has established a prima facie case of age discrimination although her proof on the third element of the McDonnell Douglas test is weak. Ms. Speck is within the protected class since she is in her fifties. As noted above, she was qualified for her job and she was discharged. McQuiddy Printing eliminated Ms. Speck's job and, hence, she was not replaced. Her duties were assumed as needed by Gene Cotton, who is in his thirties, and McQuiddy retained Jeff Young, who is in his twenties, in a job for which



Ms. Speck had trained him. The Sixth Circuite has held that "(w)hen there is a corporate reorganization or reduction in forces, a prima facie case is not established when plaintiff does not show that he was replaced by a younger person." La Grant v. Gulf & Western, 748 F.2d 1087, 1090 (6th Cir. 1984); but see, West v. Fred Wright Construction Co., 756 F.2d 31 (6th Cir. 1985) (The trial judge found that the plaintiff had established a prima facie case although the plaintiff's job was eliminated and he was not replaced. The Sixth Circuit did not overturn this finding). In La Grant, the plaintiff's job was eliminated and his duties assumed by an employee outside the protected class. The Sixth Circuit found that La Grant had failed to establish a prima facie case since "(t)he plaintiff in such reorganization cases must come forward with additional direct, circumstantial, or statistical evidence that age was a factor in his termination in order to establish a prima facie case." Id. at 1091. See also, Sahadi v. Reynolds, 636 F.2d 1116, 1118 (6th Cir. 1980); Holley v. Sanyo Manufacturing, Inc., No. 84-2303, slip op. (8th Cir. August 30, 1985). The Court finds that Ms.

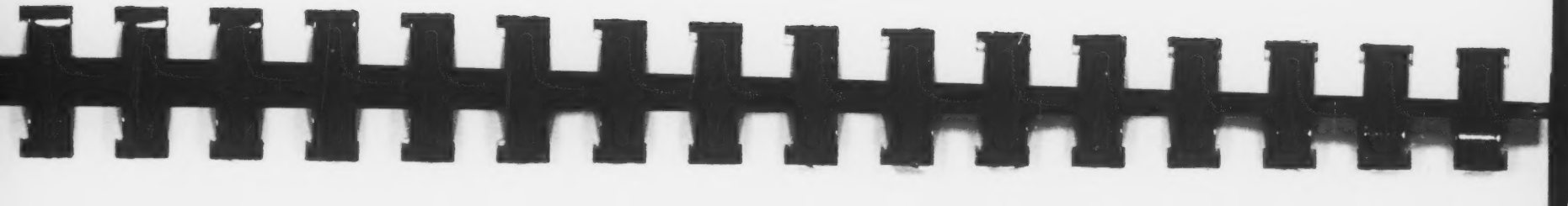
Speck has carried her burden of proof with respect to the third element McDonnell Douglas guidelines for a prima facie case of age discrimination, because although she was not replace, her duties were assumed by a person outside the protected class, see Ackerman v. Diamond Shamrock, 670 F.2d at 68, and those discharged at the same time as the plaintiff were within the protected class.

The defendant asserts that business necessity and not age was the reason for the plaintiff's discharge. The poor financial condition of McQuiddy Printing Co. has been detailed above. The Court again notes that the plaintiff does not dispute that McQuiddy Printing Co. had legitimate financial problems.

The burden of proof rests upon the plaintiff to show that the articulated reason for her discharge is not a pretext for age discrimination. This burden of proof is different than that in sex discrimination cases under Title VII since the plaintiff need not show that the alleged discrimination was intentional. The Sixth Circuit recognizes that a person is the victim of age discrimination in an employment decision

when "one factor was his age and it in fact made a difference in determining whether he was to be retained or discharged." Laugesen v. Anaconda Co., 510 F.2d 307, 310 (6th Cir. 1975). See also, Sahadi v. Reynolds, 636 F.2d 1116, 1117 (6th Cir. 1980) ("(A)ge (does) not have to be the sole reason, but only a contributing factor in connection with the discharge").

The plaintiff has presented proof that, although she was not replaced, her duties were assumed by Gene Cotton, who is outside the protected class. The plaintiff also trained Jeff Young, who is in his twenties, on the stitcher-trimmer one week prior to her discharge. The defendant admits that the plaintiff was competent to do her job. The plaintiff produced evidence that whe did service and repair work on bindery equipment and, at times, with the defendant's permission repaired equipment for competitors. As a rover, the plaintiff contended that she was routinely given rush jobs which necessitated her stopping her regular work and resetting her machine and thus hindered her production. None of this evidence with the possible exception of the retention of Jeff Young and the assumption of her duties by Gene Cotton shows an age bias by the defendant.



Proof was also introduced that the six bindery employees who were discharged in March of 1982 were within the protected class. There were thirty-two employees in the bindery department in March of 1982. Of the 32, only six were under forty and one was over 70.

Other evidence which the plaintiff presents as supportive of her claim of age discrimination consists of the lack of specificity in the criteria used in selecting those employees to be discharged. McQuiddy Printing Co had done computerized labor analyses of its work force. Both Mr. McQuiddy and Mr. Clark stated that they originally thought that Mr. Cotton, who had been furnished the reports, used them in her determination, but Mr. Cottom testified that he did not use the reports when he decided to eliminate the position of as unnecessary becuase the labor analyses were in the initial stages of development. Instead, Cotton chose to eliminate those positions which, on a subjective basis, he considered the least necessary. The plaintiff also complains that Mr. Cotton was given no firm guidelines or counseled about the requirements of Title VII or the ADEA, but Mr. Cotton testified that he

was generally aware of the proscriptions of Title VII and the ADEA. Moreover, although Mr. McQuiddys guide-to Mr. Cotton for determining the employees to discharge were not highly specific in enunciating the factors Cotton was to use, they were highly specific as to the desired effect, namely eliminate unnecessary positions and Mr. McQuiddy did review the list of persons to be fired prior to the terminations.

Ms. Speck would have the Court infer discriminatory motive in her move to rover in 1981, 18 months prior to her discharge. Originally, Ms. Speck viewed the change in position as a promotion, but evidently after her discharge viewed it as a means of perpetrating her termination. The Court simply does not credit the defendant with such motive 18 months prior to Ms. Speck's discharge. See, West v. Fred Wright Constuction Co., 756 F.2d 31, 32 (6th Cir. 1985) (Trial judge's finding that seven month period between filing of an EEOC charge and discharge was too long a period to infer retaliation was not clearly erroneous).

The plaintiff has not carried her burden of proof in proving that the asserted financial reason for her

discharge is a pretext. None of her evidence overcomes the conclusion that her employer has a legitimate economic need her employer to make cuts in its work force. The only evidence weighing even slightly in the plaintiff's favor is that Jeff Young was retained instead of the plaintiff,[2] and the fact that all those terminated with the plaintiff were in the protected class.

To ascribe age discrimination to the retention of Mr. Young requires the Court to reject the conclusion that the defendant decided to eliminate the position of rover, which it considered a luxury, but the evidence establishes that McQuiddy Printing eliminated the job of rover, which resulted in the discharge of Ms. Speck, and not that McQuiddy discharged Ms. Speck because of her age and consequently eliminated the job of rover. A rover did not specialize in the operation of a particular machine, but filled in where needed on any machine which he or she could operate. Clearly, the position of rover could be eliminated without causing production problems, particularly in

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[2]Gene Cotton was also retained, but there was no evidence that the plaintiff was qualified to perform the job of bindery supervisor.

a time when the business was not financially sound, partially due to lack of sales growth. Ms. Speck's proof amounts to her subjective determination that she was qualified to do Jeff Young's job and her conclusion that age must have been a factor in his retention and her dismissal. This is simply insufficient to carry her burden of persuasion. Accord, La Grant v. Gulf & Western, 748 F.2d 1087, 1091 (6th Cir. 1984).

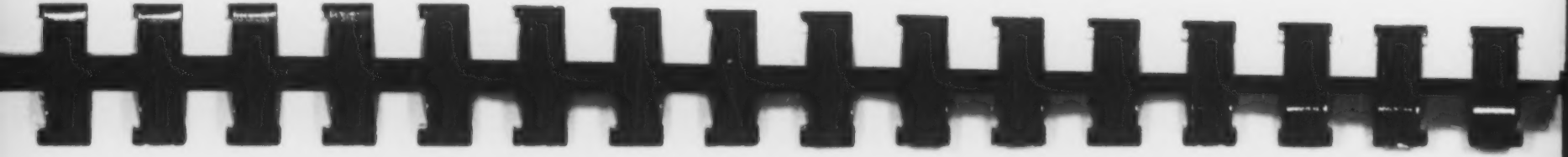
The plaintiff also fails to carry her burden of persuasion with the evidence that those discharged at the same time as she were in the protected class. The Court notes that the great majority of the bindery department's work force, at that time, was within the protected class, that two of those discharged were at the lower end of the class at ages 41 and 43, and that the 71-year-old employee was retained. While the discharge of persons within the protected class raises an inference that age was a determining factor,the plaintiff has not rebutted the evidence that the defendant eliminated specific positions, which it felt were not necessities. The only evidence produced with respect to

those terminated and their jobs, other than Bob Bardill, was the employee's ages.

West v. Fred Wright Construction Co., 756 F.2d 31 (6th Cir. 1985), while arising in a slightly different posture than the instant case, is instructive in situations where the asserted legitimate nondiscriminatory reason for the employment decision is business necessity. The plaintiff in West filed an age discrimination charge against his employer, but three months later withdrew it. Seven months after he filed the charge, he was discharged and subsequently brought suit charging retaliation. Id. at 32. The trial judge found, and the Sixth Circuit affirmed, that plaintiff had establised a prima facie case, but the plaintiff failed to carry his burden of proof to show that the asserted business necessity reason was a pretext. Specifically, the defendant's testimony established that "at the time of discharge, construction work was scarce; that due to the company's growth, (the plaintiff's) specialty, small construction jobs would not be sought in the future; that no other superintendent specializing in small jobs had been hired since appellant's dis-

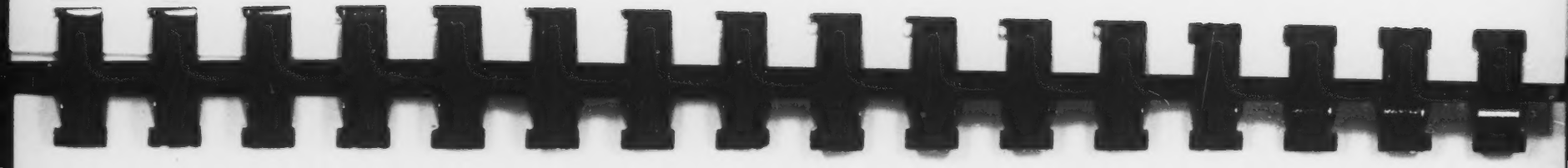
charge; and that one other superintendent was treated in the same fashion as (the plaintiff)." Id. Similarly, Mr. McQuiddy's, Mr. Clark's, and Mr. Cotton's testimony established that at the time of Ms. Speck's discharge, McQuiddy Printing Co. was experiencing financial difficulties, that Ms. Speck's job was unnecessary and would no longer be filled, and that Mr. Bardill, the other rover, was treated in the same manner.

The plantiff contends that the Court must employ the two-step test enunciated by the Sixth Circuit in EEOC v. Chrysler Corporation, 733 F.2d a883, 1186 (6th Cir. 1984), in deciding whether the plaintiff has carrried her burden of proof. Chryslerforced the early retirement of a large number of its employees during a period of severe financial difficulties. To justify forced early retirement based on economic necessity, the Sixth Circuit required a showing that "(f)irst, the necessity for drastic cost reduction obviously must be real" and "(s)econd, the forced early retirements must be the least detrimental-alternative means available to reduce costs." Id. McQuiddy Printing has shown that its need for drastic cost reduction was real, but the plaintiff claims it must also



show that the method it used to cut costs was the least detrimental to the protected class. Chrysler, however, is distinguishable from this case in that the employment decision in that case, while rooted in financial necessity, was clearly carried out solely on an age basis. In the instant case, the Court does not find that age was a determining factor or evern considered in the elimination of the job of rover, thus, there is no need to reach the two-step analysis of Chrysler.

The plaintiff also relies on Gill v. Union Carbide Corp., 368 F. Supp. 362 (E.D. Tenn. 1973), for the proposition that management must carefully establish a system of evaluation of the qualifications of its employees prior to a reduction in force because of business necessity. While the employer in Gill did conduct such a survey and, of course, carefully documented reasons for any employment decision are desirable, the Court does not find that McQuiddy Printing's process of reducing its work force to have been conducted in such an unreasonable manner that it was simply an age-based decision. The Court is well aware that "(t)he ADEA is not intended as a vehicle for general



judicial review of business decisions." Steckl v. Motorola, Inc., 703 F.2d 392, 394 (9th Cir. 1983). The Court finds that McQuiddy Printing's discharge of the plaintiff was a business decision not motivated by discrimination based on age.

Judgment shall, therefore, be entered for the defendant on both the Titel VII claim and the Age Discrimination in Employment Act claim brought by the plaintiff. An appropriate order will be entered.

Thomas A. Higgins
United States District Judge

No. 85-5971

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

WILLIE MAI SPECK,

Plaintiff-Appellant,

v.

McQUIDDY PRINTING COMPANY, INC.

Defendatn-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

BEFORE: KRUPANSKY and RYAN, Circuit Judges, and HULL, District Judge*

RYAN, Circuit Judge. This is an appeal from a judgment entered in a bench trial dismissing plaintiff's Title VII and age discrimination suit. The district court held that Speck had failed to carry her burden of proving discriminatory intent and motive. Speck challenges the district court's factual determinations as clearly erroneous and contends that the court erred in failing to apply the Chrysler[1] test of "least detrimental

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*The Honorable Thomas G. Hull, Chief Judge of the United States District Court for the Eastern District of Tennessee, sitting by designation.

[1]EEOC v. Chrysler, 733 F.2d 1183 (6th Cir. 1984).

alternative means" to McQuiddy's defense of economic necessity. We disagree. There is ample evidence to support the district court's factual determinations, and on these facts, the Chrysler test is inapplicable. Therefore, we affirm the district court's decision.

I

Speck began working for McQuiddy Printing Company in January of 1950. She was the only female machine operator in the bindery section of the plant. There is no dispute as the her qualifications for this job; indeed, because she was able to operate and provide maintenance for every machine in the bindery department, she was promoted to the position of "rover." This position was designed to provide relief, backup and assistance to the regular machine operators. Historically, printing companies divide the bindery section into two levels: men operate machines and women do hand or table work. Other than Speck, there has never been another female machine operator for McQuiddy.

Speck was discharged on March 19, 1982. She was 59 years old. At the time of her discharge, McQuiddy

was experiencing severe financial difficulties. For the first time in its history, the plant began to layoff employees. The bindery department supervisor was instructed to submit a list of persons whose positions the company could do without. Pursuant to his recommendation, the position of "rover" was eliminated. Both of the department's rovers, Speck and a Mr. Bardill, were let go. Their positions have never been replaced; instead, when service or relief become necessary, these duties are assumed by the department supervisor.

II

The district court found that Speck had established a prima facie case for both age and sex discrimination. McDonnell Douglas v. Green, 411 U.S. 702 (1973); Laugesen v. Anaconda Co., 510 F.2d 307 (6th Cir. 1975). That being so, Speck succeeded in raising a presumption of discrimination and the burden shifted to McQuiddy to articulate legitimate reasons for the discharge. Furnco Construction Corp. v. Waters, 438 U.S. 567 (1987). The trial court found, and we agree, that McQuiddy carried its burden by asserting that economic necessity precipitated Speck's termination.

In cases of discrimination, the plaintiff always has the untimate burden of persuading the court that the employer acted with discriminatory motive and, therefore, the proffered reasons are pretextual. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). In this case, Speck asked the trial court to infer gender based discrimination from two circumstances: the historical pattern of discrimination in the printing industry, and McQuiddy's failure to "post" or advertise machine operator openings. Speck testified that she had been the only female operator with McQuiddy for 32 years and had, during that time, never experienced discrimination. The district court determined that Speck's job was eliminated out of economic necessity.

As to the age discrimination claim, the district court determined that aside from Speck's own subjective belief that age was a determining factor in her discharge, there was simply no evidence of age discrimination. Holding that Speck had failed to carry her burden of persuasion, the district court dismissed both claims.

In order to set aside the court's findings of fact in a bench trial, this Court must find that such determinations are "clearly erroneous." "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948). This standard applies to both Title VII determinations of discriminaatory intent and determinations that age is a decisive factor in employment discharge cases. Fields v. Bolger, 723 F.2d 1216 (6th Cir. 1984); West v. Fred Wright Construction Co., 756 F.2d 31 (6th Cir. 1985). In this case, we are unable to conclude that the district court's determinations are clearly erroneous.

III.

Speck's contention that the district court should have applied the "least detrimental alternative means" test set forth in the Chrysler case is without merit. In Chrysler, the failing auto company had concededly forced retirement upon employees over age 55 without the possibility of recall, which was available to those

under 55. Chrysler asserted the defense of economic necessity. The district court granted a preliminary injunction in the plaintiff's favor. In affirming the district court, this Court held that in order for "imminent bankruptcy" to legitimate a clear violation of the ADEA, the defendant would have to meet the "least detrimental alternative means" test. Chrysler, 733 F.2d at 1186.

Speck argues that once a plaintiff establishes a prima facie case of age discrimination and the defendant raises the defense of economic necessity, the court is required to apply the Chrysler test. Speck contends that the humanitarian policy behind the ADEA requires such a result.

We cannot agree. Under the Chrysler analysis, an employer found to be discriminating on the basis of age can continue to do so only under certain conditions. However, in order for a court to "justify" an employer's discrimination, it must necessarily first find discrimination. In the case at bar, the district court specifically concluded that age was not a determining factor in Speck's discharge. Therefore, the district court

correctly refused to apply the Chrysler test.

The decision of the district court is affirmed.

ISSUED AS MANDATE: 3/10/87

COST: none

No. 85-5971

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WILLIE MAI SPECK	)	
	)	
Plaintiff-Appellant,	)	ON APPEAL from the
	)	United States District
v.	)	Court for the Middle
	)	District of Tennessee
McQUIDDY PRINTING COMPANY, INC.	)	
	)	
Defendant-Appellee.	)	

Decided and Filed , 1987

Before: KRUPANSKY and RYAN, Circuit Judges; and HULL, District Judge.*

HULL, District Judge. Because plaintiff Speck held a traditionally male position of machine operator and was th highest paid woman at the bindery, I would agree that she has not proved sex discrimination with regard to her discharge. However, the evidence that plaintiff was an extremely capable employee, discharged three weeks before her 60th birthday and replaced by a 25-year-old male she had recently trained, and that she

was never offered his job or any other position with the defendant, gives rise to a very strong inference of age discrimination. In light of the fact that despite 32 years with the defendant she was the first employee ever to be laid off, the defendant's proffered reason of economic necessity is incapable of credence. I find the district court's ruling with regard to age discrimination clearly erroneous and must respectfully DISSENT.